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THE METROPOLIS

Local Management Acts,

TO WHICH IS ADDED

AN APPENDIX CONTAINING OTHER STATUTES RELATING TO THE POWERS AND DUTIES OF THE METROPOLITAN BOARD OF WORKS, VESTRIES, AND DISTRICT BOARDS OF THE METROPOLIS,

WITH

TABLE OF CASES, NOTES, AND INDEX.

SECOND EDITION.

BY

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TO

LIEUTENANT-COLONEL

SIR J. M. McGAREL-HOGG, BART., K.C.B., M.P.,

CHAIRMAN OF THE

Metropolitan Board of Works,

THIS WORK IS,

BY PERMISSION, RESPECTFULLY DEDICATED

BY

HIS OBEDIENT FAITHFUL SERVANT,

THE EDITOR.

2000709

PREFACE.

SIXTEEN years have elapsed since the first edition of this work was published, and in the intervening period the great increase of population, the extension of building operations, the effects of recent legislation, and other causes, have largely augmented the labours and responsibilities of the public bodies charged with the local management of the Metropolis. According to the estimate of the Registrar General, based upon the decennial census of 1861, the population within the area subject to the jurisdiction of the Metropolitan Board of Works, which in that year numbered 2,803,989 souls, had, in the year 1878, risen to 3,577,304; whilst the rateable annual value of property within the same limits, which in the year 1863 amounted to £12,569,969, had, at the close of the year 1878, reached £23,960,109. The number of inhabited houses within the same area was also largely increased between the years 1861 and 1871, the date of the last census; their number in the former year having been 360,065, whilst in the latter it was 417,767: and an examination of the notices of new buildings to District Surveyors, and Vestries and District Boards, and other trustworthy sources of information, affords grounds for the conclusion that the annual rate of increase which

prevailed between 1861 and 1871 has, since the last-mentioned date, not only been maintained but considerably exceeded.

The voluminous additions to the statute book since the year 1863 have vastly enlarged the sphere of action of the Metropolitan Boards and Vestries, and embrace within their range almost every branch of local and sanitary administration. The Acts relative to the multifarious operations of the Metropolitan Board of Works as described in their last annual report are, with the statutes passed in the last Session of Parliament, nearly a hundred in number: to which must be added, in a survey of metropolitan local legislation, a large body of Acts especially appertaining to the general powers and duties of Vestries and District Boards, or relating to limited districts and special localities. In dealing with a mass of material of such extent and diversity, it has been found necessary to make a selection, and to print *in extenso* only those statutes which relate to the principal ordinary functions of the Metropolitan Authorities, and to embody in notes to those statutes a reference to the material provisions of such enactments as were considered of subordinate practical importance or less general application.

The present volume contains a large number of Acts which were not comprised in the former edition, whilst three or four only are omitted—namely, those authorizing the construction of those great structural works now completed, the Main Drainage and the Embankments of the Thames. The Lands Clauses Consolidation Act, 1848, is also omitted, by reason of its great length;

it having been deemed sufficient to refer to its main provisions in the notes, as to have printed it in its entirety would have necessitated the exclusion of matter of greater practical utility.

The arrangement in the present collection is substantially similar to that adopted in the former edition. The body of the work comprises the original Act constituting and incorporating the Metropolitan Board and the Vestries and District Boards, with the two principal amending Acts; whilst the Appendix contains statutes relating to the continuance and appropriation of funds applicable to special metropolitan improvements, the borrowing of money by the Metropolitan Board, and the assessments of that body; a few Acts supplementing the provisions of the original enactments in reference to matters either omitted from or inadequately dealt with by them; and a series of enactments directed to various important objects connected with the health, safety, convenience, and material and social well-being of the community, such as the protection of life and property against danger from fire, the storage and conveyance of explosives, for ensuring effectual control over the sites, foundations, and construction of buildings, the prevention and suppression of nuisances, and the enforcement of proper sanitary regulations, for preventing the adulteration or deterioration of food and drugs, and the execution of works for protecting low-lying lands from floods and inundations, with various others. Some of these require special notice here.

The Metropolitan Board of Works (Loans) Act, 1869, was a

measure which effected extensive alterations in the powers and proceedings of that Board as regarded borrowing and assessment. It restrained them, except for a limited period after its passing, from borrowing any money otherwise than in conformity with its provisions, and empowered them to create Metropolitan Consolidated Stock and Terminable Annuities. It required them, in lieu of all other rates or assessments over the Metropolis, to raise a Metropolitan Consolidated Rate, and established a Consolidated Loans Fund for paying dividends on and redeeming Consolidated Stock. It enabled them to lend money to the managers of the Metropolitan Asylums District, a provision extended by subsequent legislation to loans to Vestries and District Boards and other public bodies exercising rating powers in the Metropolis. The subsequent Loans and Money Acts of the same Board are referred to in the notes in such a manner as to present a connected view of the existing statute law governing this important branch of their financial proceedings.

Another Act requiring observation is the Nuisances Removal Act for England, 1855, with the series of statutes by which it was amended and extended. Unfortunately the law for the prevention and suppression of nuisances and enforcing proper sanitary regulations within the metropolitan area must still be sought for in a multiplicity of scattered and isolated enactments, which, though repealed by the Public Health Act, 1875, as to the rest of the kingdom, are still kept in force in the Metropolis. The Local Government Board, in 1877, introduced into Parliament a Bill proposing, amongst other objects, to repeal the whole of these

Acts, and to re-enact their main provisions with modifications. The measure failed to secure the approval and support of the Metropolitan authorities; and, after having reached the second reading, it was withdrawn. The principal ground on which the Bill was objected to was, that it proposed to introduce the Local Government Board as a controlling authority over the Vestries and District Boards, involving, it was said, a prejudicial interference with the independence of those bodies. It is to be regretted that no course was suggested by which the conflicting views of the promoters and opponents of the Bill could be reconciled, and a convenient and beneficial measure allowed to become law, either by the omission, or by some modification of the provisions objected to.

Another imp ortant measure, which will be found in the Appendix, is the Metropolis Management and Building Acts (Amendment) Act, 1879), which effects a beneficial extension of the original Building Act. Amongst other provisions, it empowers the Metropolitan Board in certain cases to cause alterations to be made in existing theatres and music-halls, and to make regulations respecting the position and structure of new buildings of that description; and it empowers the same Body to make bye-laws with respect to the foundations and sites of houses, buildings, &c., and to the mode in which, and material with which, such foundations and sites are to be made and completed for securing stability, preventing fire, and for purposes of health. The Board have, under this last provision, framed a set of bye-laws for giving effect to the objects contemplated by the Act. These bye-laws

which, amongst other requirements, contain stringent regulations with respect to the foundations and sites of buildings, and the description and quality of the substances of walls were confirmed by the Secretary of State as recently as on the 6th of the present month (October, 1879), and they appear thoroughly adapted to give effect to the salutary powers conferred by the Act upon the Metropolitan Board.

The number of new statutes appertaining to the functions of the Metropolitan Local Authorities increases year by year, and even in the Session of Parliament just ended several important measures affecting the Metropolis have become law, several of them, however, of too late a period to admit of their being inserted in the body of the work. It has, consequently, become necessary to print them as a Supplement. As several of these make important alterations in the earlier Acts, and materially qualify some of the decisions cited in the notes, it becomes necessary to give a succinct summary of their main provisions here.

One of the most important of these measures is the Metropolis Management (Thames River, Prevention of Floods) Act, 1879, which did not receive the Royal Assent until the 11th August last. This enactment demands special notice as containing a statutory affirmation of the general law applicable to the obligations of owners and occupiers of low-lying lands liable to inundation, though modified and conditioned by the special requirements of the localities affected by it, and as materially altering some of the provisions of the Management Act of

1855. It provides for the execution and maintenance of certain works described as "flood works," for preventing the overflow of the Thames within the limits of the Metropolis, and for the expenses incurred in relation to such works. The expression "River Thames" is interpreted to include the rivers, streams, and watercourses within the flow and reflow of the tides of that river within the limits of the Act. It defines the expression "flood works," and describes the conditions and formalities applicable to their execution. It specifies the bodies and persons liable to provide for executing them, and enacts that the Commissioners of Sewers of the City of London, the Vestries and District Boards, and owners of premises respectively, shall, subject to the provisions and limitations of the Act, be liable to provide for the execution of the works described. It restrains the Metropolitan Board from directing the execution of any works other than such as are necessary for the protection of lands from floods and inundations caused by the overflow of the Thames, or any works for the embankment of the Thames in the nature of the embankments already executed under the authority of special Acts of Parliament. Amongst its other provisions, the Board are required to cause a plan of the necessary works to be prepared, and to serve notices on the several bodies and individuals affected by them, with provisions for their modification, and power to those bodies to execute the works, and the Metropolitan Board to carry them out in default. It makes the bodies and persons liable to provide for the execution of flood works upon any premises, also liable to repair the banks upon the same, and contains savings in favour of Dock Companies and others. It gives a claim for compensation,

subject to the exception in the proviso to the 25th section, against the Metropolitan Board for damage sustained by the execution of flood works, or in respect of any lands or interest in land taken, or used, or injuriously affected by such works, to be settled, in the event of disagreement, by arbitration, in accordance with the provisions of the Act; and these provisions are to be in substitution of those relating to the tribunal for settling questions of disputed compensation contained in the Metropolis Management Act, 1855, or any Act incorporated with it. It provides for the appointment of a Standing Arbitrator for the settlement of claims, and for the recovery of expenses incurred by the Metropolitan Board from the Commissioners of Sewers of the City of London, Vestries, District Boards, and owners. It preserves the liability of persons or bodies, by Act of Parliament, prescription, or otherwise, to maintain and repair river banks, and repeals the provisions contained in the 69th and 70th sections of the Metropolis Management Act, 1855, so far as they relate to the execution and maintenance of flood works by Vestries and District Boards. This Act effects important changes in the law applicable to the execution and maintainance of works of this nature, and having regard to the comprehensive interpretation given by it to the terms "Bank," "Dam," and "Flood works"—an interpretation which seems to embrace a large share of the subjects of jurisdiction and management hitherto vested in the Local Authorities under the 69th section of the Act of 1855, it may, in some cases, become a question of difficulty to determine what powers are still left in those bodies under the original enactments, or to what extent their powers are superseded.

Another important Act of the last Session is the Artizans Dwellings Act (1868) Amendment Act, 1879, which, amongst other provisions, empowers the owner of any premises specified in an order of a Local Authority under the Act of 1868, requiring him to execute any works or to demolish premises, to call upon the Local Authority within three months after service of the order to purchase the premises. In case of no agreement being come to, the amount of compensation is to be settled by arbitration in manner provided by the Act, the arbitrator to be appointed and to be removable by the Local Government Board, with special provisions for estimating the value of the premises, and settling the amount of compensation. Additional powers are conferred upon the Local Authority for the recovery of expenses and other objects. In the event of a Local Authority neglecting for the space of three months after notice from the Metropolitan Board to put in force the provisions of the Act, the powers of the Local Authority in respect of the premises in question become vested in the Metropolitan Board, and all expenses incurred by that Board under the Act shall be paid on demand by the defaulting Authority out of the local rates.

Another Act of the last session upon a cognate subject is the Artizans and Labourers Dwellings Improvement Act, 1879, which, amongst other provisions, amends the 19th section of the Act of 1875, with respect to estimating the amount of compensation payable for lands taken in pursuance of the Act, and authorizes the arbitrator to receive evidence that the premises the subject of the inquiry were at the date of the confirming Act

or some previous date not earlier than that of the official representation, in such a condition as to have been a nuisance within the Acts relating to nuisances; and if the arbitrator is satisfied that they were so, he is directed to determine what would have been the value of the premises supposing the nuisance to have been abated, and also the expense of abating it; and the amount of compensation payable shall be an amount equal to the estimated value of the premises after the abatement of the nuisance, and after deducting the estimated expense of abating it.

The Act also amends the 5th section of that of 1875 relating to provisions for the accommodation of the working classes, which required the board, except for special reasons, to provide accommodation within the limits of the same area, or in its vicinity, and it enables the confirming authority to authorize or modify an improvement scheme providing accommodation at some place other than within the area or the immediate vicinity of the area comprised in the improvement scheme. The latter of these two Acts will be found at page 582 of this work; the former in the Supplement.

Another Act, which only received the royal assent on the 16th August last, is the Petroleum Act, 1879, which is to be construed as one with the Petroleum Act of 1871. It alters the test defined by the last-named Act, provides for a model of the testing apparatus, and for the verification of any apparatus submitted to the Board of Trade. The first schedule contains a specification of the testing apparatus, with directions for applying what is

known as the flashing test. The second schedule specifies that part of the Act of 1871, which is either wholly or partially repealed. This Act will also be found in the Supplement.

In the Appendix will be found another important measure of the last session, The Sale of Food and Drugs Amendment Act, 1879, enacting by the 2nd section, that in any prosecution under the Food and Drugs Act, 1875, for selling to the prejudice of the purchaser any article or any drug which is not of the nature, substance, and quality of the article demanded, it shall be no defence to allege that the purchaser having bought only for analysis, was not prejudiced by the sale, or that the article, though defective in nature, substance or quality, was not defective in all three respects.

Amongst other amendments it empowers the medical officer of health, inspector of nuisances, &c., to procure a sample of milk at the place of delivery, with the same consequences as to analysis, legal proceedings, and penalties, as if the article had been purchased under section 13 of the Food and Drugs Act, 1875. And any street or open place of public resort is defined to come within the 17th section of the Act of 1875.

It also contains provisions defining to what extent the sorts of spirits specified may be reduced in strength by the admixture of water, without involving a contravention of the 6th section of the Act of 1875.

The law had already been laid down, before the passing of the Act,

by the Queen's Bench Division of the High Court of Justice, in accordance with the provision contained in the 2nd section above cited, and it is now definitively settled by express statutory enactments once for all removing doubts as to the construction of the former Act, which seriously obstructed the beneficial action of the Vestries and District Boards in their efforts to carry into execution the provisions of a most useful Act of Parliament.

Another statute of the last session to which attention must be called, is the Metropolitan Board of Works Indemnity Act, 1879, which authorizes the Board to defray the expenses of promoting two bills in Parliament, one for the supply of water for certain purposes to the Metropolis by the Metropolitan Board of Works, and the other for the purchase by the Board of the undertakings of the several water companies, supplying water to the Metropolis and to certain places in its neighbourhood, and for other purposes. This expenditure was disallowed by the auditor on the ground that in incurring it the Board had exceeded their legal powers.

The Act of Parliament sanctioning the expenditure, recites that the bills in question were promoted and the expenses incurred by the Metropolitan Board in good faith, and in the belief that in promoting them they were acting within their legal powers, and it authorizes them to defray the expenses in question when audited and taxed, as if they were expenses legally incurred by them in the execution of the Metropolis Management Act, 1855, and the Acts amending it.

The last Act to be noticed is the Metropolitan Board of Works (Money) Act, 1879, which was passed on the 15th August last, and a reference to it must be added to the list of enactments enumerated in note (*d*) to section 36 of the Metropolitan Board of Works (Loans) Act, 1869, page 257.

The statutes in the present collection are accompanied by explanatory notes, showing the amendments and alterations of the earlier Acts effected by subsequent legislation; and the editor has endeavoured to elucidate their construction by a careful examination of the authorities, and a reference to the reported decisions of the courts on their main provisions, or on analogous enactments in other statutes. Numerous questions have arisen on many of their most important sections, several of which were the subject of protracted litigation, varying decision, and a diversity of opinion among the judges, and only finally decided on appeal to the House of Lords, and not even then with entire unanimity. The decisions, which were reported too late to admit of their being inserted in the body of the work, are referred to in the *Addenda*.

Mr. William Edgar Saunders, Barrister, of the Middle Temple, has assisted the Editor in preparing this work for the press, and he has much pleasure in acknowledging the valuable aid he has afforded him.

The task of editing it has involved considerable labour, and in performing it the Editor has used his best exertions so to arrange

and explain the matter he has had to deal with as to present to the reader a comprehensive and accurate summary of the laws which it is intended to elucidate, and to render the work a convenient book of reference for the use of the legal profession, and a serviceable practical guide to the Metropolitan Boards and Vestries and their officers.

LONDON,
November, 1879.

INTRODUCTION TO FIRST EDITION.

THE principal Acts contained in this volume, and which form the basis of the present work, are the 18 & 19 Vict. c. 120, for the better Local Management of the Metropolis, and the three Amending Acts, the 19 & 20 Vict. c. 112, the 21 & 22 Vict. c. 104, and the 25 & 26 Vict. c. 102; and other statutes either expressly incorporated with the first-named Act, or having special reference to the powers and duties of the boards and vestries constituted by it, are added by way of Appendix. The object of this publication is to elucidate the construction of those Acts, for which purpose the reported decisions of the courts upon such of their provisions as have received judicial interpretation, and upon analogous enactments in other statutes, are collected in the notes. Attention is also directed to those provisions of the original Act which experience had shown to be defective, and to the amendments embodied in the Acts which were subsequently passed. It may well be supposed that an Act of Parliament which gave a municipal organization to the extensive districts described in its schedules, with a rental at the time of its passing (exclusive of the city) amounting to 9,011,220*l.*, and a population of 2,233,108 souls, did not remain exempt from the ordinary litigation attending extensive legislative changes. But to understand the causes which led to the passing of that important measure, and to appreciate its results, it will be desirable, in the first instance, to make some reference to the laws under which the management of the metropolitan districts as regards their sewerage and paving, their improvements, and other subjects of local administration, had previously been conducted.

The limits of the Metropolis, as defined by that Act, include the City of London, and the several parishes and places enumerated in the first three schedules appended to it; and the definition of the City of London is that given by the City Sewers Act, the 11 & 12 Vict. c. 163. The city and liberties of London consist of the city within the walls and without the walls, containing together an

area of about 723 acres. Commissions of sewers were issued to the civic authorities from an early period. It is recorded that a commission was, on the complaint of Henry de Lacy, Earl of Lincoln, directed to the Mayor and Sheriffs of London in the thirty-fifth year of Edward I., requiring them to scour and clear the River Fleet (*a*). The 19 Car. 2, c. 3, for rebuilding the City of London after the Great Fire, vested in the Common Council certain duties relating to sewerage, and empowered that body to appoint persons under the common seal of the Corporation to design and set out sewers, drains, and vaults within the city and liberties. Other Acts were subsequently passed relating to the sewers of the city, viz., the 11 Geo. 3, c. 29, the 33 Geo. 3, c. 75, and the 4 Geo. 4, c. 114. Those Acts, which contained provisions for paving, lighting, and cleansing, and for preventing and removing obstructions and annoyances, were repealed by the above-mentioned Act, the 11 & 12 Vict. c. 163, which has since been amended and extended by the 14 & 15 Vict. c. 91. It is under those Acts that the City Commissioners of Sewers now exercise their powers. By the 7th section, the Mayor, Aldermen, and Commons are empowered from time to time to appoint by deed under their common seal such persons as they shall think fit for carrying the Act into execution. Under it the sole power of making, repairing, and altering sewers, drains, and vaults, and of paving, lighting, cleansing, and improving the streets within the city, as defined by the Act, is vested in the Mayor and Commonalty, and Citizens of London, to be executed by Commissioners to be nominated and appointed by the Mayor, Aldermen, and Commons, in Common Council assembled, under the common seal. This Act came into operation on the 1st January, 1849, and the clause limiting its continuance to two years, and thence to the end of the then next Session of Parliament, was repealed by the 14 & 15 Vict. c. 91. The sole power conferred by it, of making and maintaining sewers within the city to the Corporation, to be exercised in the manner described, must now be regarded as subject to the alteration introduced by the 18 & 19 Vict. c. 120, by which main sewers have become vested in the Metropolitan Board of Works. Various powers for the regulation of streets and prevention of nuisances are contained in the City Police Act, 2 & 3 Vict. c. 94. The Corporation also, from an early period, made ordinances

(*a*) See "Law of Sewers," by Serj. Woolrych, 2nd ed. p. 2.

embodying regulations with respect to building, and legislative provision was made on the same subject in the Act 19 Car. 2, c. 3, and in subsequent statutes. The present Metropolitan Building Act is the 18 & 19 Vict. c. 122, but certain provisions of the former statutes, 14 Geo. 3, c. 78, and 7 & 8 Vict. c. 84, are still unrepealed (*b*). Important administrative functions affecting river side property were also exercised by the Corporation of London, in connection with the Conservancy of the River Thames. The Lord Mayor was by an ancient grant from the Crown Conservator of the Thames, within the Port of London (*c*), and the Corporation claimed to be entitled to exercise rights of ownership over the bed and soil of the river. This claim, which was contested by the Crown, became the subject of a suit in Chancery, instituted by the Attorney-General against the Corporation for the purpose of determining the rights of that body and of the Crown in relation to the bed and soil of the river, and its shores within the flux and reflux of the tide. The suit was brought to a close by an agreement made in the year 1856, by virtue of which, and of another agreement of the 24th February, 1857, a grant of the estate and interest of the Crown was made to the Corporation, in consideration of their paying annually to the Commissioners of Woods and Forests one-third of the monies, rents, and proceeds which they might receive in respect of sales, leases, grants, or licences for docks, piers, &c., in or upon the bed of the river, or of encroachments, embankments, or inclosures, on or near to it, and of their applying the residue to the improvement of the navigation. That portion of the bed of the river situate in front of lands, &c., belonging to the Crown, or which were the property or in the possession of any Government department, was excepted from the grant. The Thames Conservancy Act, the 20 & 21 Vict. c. 147, gave effect to this arrangement, and vested in the Conservators appointed by virtue of its provisions all the estate of the Corporation and of the Crown in the bed and soil of the river, except the portion referred to above reserved to the Crown, and transferred to the same body all such powers and authorities as were theretofore vested in the Crown or Corporation in relation to the conservancy of the river. The Metropolitan Commissioners of Sewers, acting under 11 & 12 Vict. c. 112, considered that that

(*b*) See the Act 18 & 19 Vict. c. 122, *post*, in the Appendix.
(*c*) Between Staines in Middlesex, and Yuntleet in Kent.

Act empowered them to execute works on the bed and foreshore of the Thames, without obtaining the permission of the Thames Navigation Committee, the body charged with the exercise of the chief powers of the Corporation, relating to the conservancy of the river, and when they required to execute such works they did not apply for leave, but merely gave notice to the Committee of their intention to commence them. The Committee, however, claimed the right of giving or withholding permission, and required that the works should be executed under the supervision of the water bailiff, one of their officers; and there is little doubt that their permission was necessary before any such works could be executed. At present the previous approval of the conservators is clearly requisite before any works on the bed or foreshore, which may affect the navigation, can be carried out, and in a recent case (*a*) the want of such approval was held to render the proceeding a wrongful one. The Thames Embankment Act, 25 & 26 Vict. c. 93, contains special provisions respecting works on the foreshore, which, however, only apply to that undertaking. As regards its internal government, the administration of local matters within the city of London has for a considerable period rested on a basis which has practically secured for its inhabitants a substantial representation of their interests and wishes. This was pointed out in the Report of the Commissioners appointed in 1853 to inquire into the state of the Corporation (*b*), and they ascribe this result in a great measure to the mode in which the Common Council is elected. But these advantages were confined to the narrow area included within the city proper, and the metropolitan districts beyond those limits were, until the introduction of the Metropolis Local Management Act, for the most part excluded from their operation.

Those extensive districts which were without the city had no general municipal organization, and were for the most part wholly unconnected with each other. Various statutes from time to time defined "the metropolis" for the specific purposes for which they were passed. The earliest example of such a district was that included in the weekly bills of mortality, which were originally weekly reports or returns by the parish clerks of

(*a*) *Brownlow* v. *Metropolitan Board of Works*, vol. 31, L. J. (N.S.) Q. B. p. 140.

(*b*) See Report, with minutes of evidence, and Appendix (1854), p. 12.

London, relative to christenings and burials. They are said to have originated in 1562, and additional parishes were from time to time included within them, until they at length comprised the ninety-seven parishes within the city walls, the seventeen parishes without the walls, twenty-four out-parishes in Middlesex and Surrey, and ten parishes in Westminster (*c*). In addition to the general statutes affecting the parishes without the city, and within the present metropolitan limits, a large proportion of them were governed by local Acts, of which there are several hundred, presenting great diversity in their objects and provisions. The sewerage of the larger portion of those districts was under the control of commissioners appointed under 23 Hen. 8. c. 5. The commissions were seven in number, viz., for Westminster and part of Middlesex, the Tower Hamlets, Saint Katherine's, Poplar and Blackwall, Holborn and Finsbury, Surrey and Kent and Greenwich. They were all subject to the general statutes concerning sewers, and several of them had obtained special Acts for extending their powers. The general statutes of sewers applicable to those commissions were 28 Hen. 8, c. 5 (*d*); 3 & 4 Edw. 6, c. 8; 13 Eliz. c. 9; 7 Anne c. 10; and 2 Wm. & Ma. sess. 2, c. 8. To these must be added 3 Jas. 1, c. 14, subjecting to the commission of sewers the walls, ditches, &c., and watercourses within two miles from the city of London, which waters had their course and fall into the Thames; and 2 Wm. & Ma. sess. 2, c. 8, providing that all new sewers made within London and Westminster and the other places named at any time since the twelfth year of the reign of Charles the Second should be subject to the jurisdiction of the commissioners. The Middlesex commissions were expressly exempted from the operation of the General Sewer Acts, 3 & 4 Will. 4, c. 22, but the provisions of that enactment applied to those on the south side of the Thames, viz., for Surrey and Kent and Greenwich; and by the latest of the local Acts relating to one of the commissions in Middlesex, viz., the Westminster, 10 & 11 Vict c. 70, numerous provisions of the general statute were by express reference and incorporation made applicable to that commission, notwithstanding the exception referred to. The commissions which had obtained local Acts were those for West-

(*c*) See *Pulling*, "Laws of London," p. 264.

(*d*) See reference to earlier statutes concerning sewers, Serj. Woolrych's "Law of Sewers," 2nd ed., p. 5, *et seq.*

minster, the Holborn and Finsbury, and Surrey and Kent. As many important questions affecting the rights of the present boards and vestries in relation to sewers, the liabilities of private parties with reference to sewerage works, the rights of creditors on the rates and other matters from time to time present themselves and necessitate a reference to those statutes, it will be convenient to enumerate them, and briefly to advert to the more important of their provisions. The local and personal Acts relating to the Westminster commission were 47 Geo. 3, c. 7; 52 Geo. 3, c. 48; and 10 & 11 Vict. c. 70; those applicable to the Holborn and Finsbury commission were 18 Geo. 3, c. 66, and 54 Geo. 3, c. 219; and the Acts relating to the Surrey and Kent commission were 49 Geo. 3, c. 183; 50 Geo. 3, c. 144; 53 Geo. 3, c. 79; and 10 & 11 Vict. c. 217. The 47 Geo. 3, c. 7, recited 3 Jas. 1, c. 14, enacting that all sewers, &c., within two miles from the city of London having their course and fall into the Thames, should be subject to the commission, and also recited 2 Wm. & Ma. c. 8, rendering subject to the commission all new sewers made in any of the parishes, &c., enumerated, since the twelfth year of the reign of Charles II.; and then enacted that all "walls, ditches, sewers, &c.," west of the city of London extending to and including a watercourse dividing the parishes of Chelsea and Fulham, including the several parishes enumerated, having their course and fall into the Thames, should be fully subject to the commissioners of sewers: and it gave the commissioners increased powers for the execution and control of works, and in other respects. The 52 Geo. 3, c. 48, amongst other things, gave the commissioners certain powers for the levying of equal rates; and 10 & 11 Vict. c. 70, extended the jurisdiction of the commission over all places named or to be named in it, whether or not the tide ebbed and flowed therein; and gave the commissioners additional powers for the construction of works, for enforcing the construction of sewers by private parties, imposing on such parties the cost of works, for compelling house drainage, and for making rates and other objects. There was also a special Act obtained by the Westminster commissioners for the formation of a sewer at Bayswater, 4 & 5 Will. 4, c. 96. This sewer was constructed by means of money borrowed, to be repaid by instalments within twenty years. The whole of the money has been repaid. By 18 Geo. 3, c. 66, the Corporation of London were empowered to construct a new sewer within the prebendal estate of Halliwell

and Finsbury, and so much of it as was in the county of Middlesex was placed under the Holborn and Finsbury commissioners, and in consideration of the benefit accruing to the districts under their charge, those commissioners were directed to pay into the Chamber of the City of London the annual sum of £150 for ever; and it contained other provisions relating to the sewerage of the districts, the mode of making rates, and other matters. By 49 Geo. 3. c. 183, the Surrey and Kent commissioners were, amongst other things, empowered to make new sewers within the parishes named in the Act, to purchase lands mentioned in the schedule, by agreement or compulsorily, and to borrow, on the security of the rates, sums not exceeding £15,000. The 50 Geo. 3, c. 144, directed them to keep separate accounts of the charges of making new sewers in particular parishes, and fixed the proportions in which the expenses should be paid; it extended the jurisdiction of the commissioners to other parishes; and they were empowered to borrow not exceeding £60,000. The 53 Geo. 3, c. 79, authorizes the commissioners to borrow a further sum of £40,000, and provided for the division of districts; and it gave compulsory powers for the acquisition of lands enumerated in the schedule. The 10 & 11 Vict. c. 217, applied all the powers of the former Acts to the extended districts enumerated in the schedule, and gave increased power for enforcing contribution to the cost of sewers, compelling house drainage and other things.

With respect to the paving of the districts under consideration and the suppression of nuisances, it may be here stated that in the year 1817 was passed the Metropolitan General Paving Act, 57 Geo. 3, c. 29, commonly known as Michael Angelo Taylor's Act, which consolidated and reduced into a species of system many of the provisions relating to paving and the regulation and improvement of streets which were contained in the special Acts of particular parishes. It was expressly incorporated in many of the special Acts which were subsequently passed, and where there was no such express incorporation the commissioners or trustees exercised some of the powers conferred by it in conjunction with those given by the local Acts under which they were appointed. The operation of that Act was limited to the streets and public places then paved or which might thereafter be paved within the Cities of London and Westminster, and Borough of Southwark, and other parts included within the weekly bills of mortality, and within the parishes of St. Pancras

and St. Marylebone, with certain specified exceptions. Many of the parishes comprised in the present metropolitan limits were neither within the bills of mortality nor included among the parishes specially mentioned in that Act, but 25 and 26 Vict. c. 102, s. 73, has now extended many of its provisions to the whole of the metropolitan districts (*a*). The Crown estate, near the Regent's Park, Regent Street, and some adjacent localities and certain parts contiguous to the Houses of Parliament were subject to the jurisdiction of a special body of commissioners acting under 5 Geo. 4, c. 100; but by 11 & 12 Vict. c. 112, all powers in relation to sewerage which had been vested in those commissioners were transferred to the Metropolitan Commissioners of Sewers; and by a subsequent Act, the Crown Estate Paving Act, 14 & 15 Vict. c. 95, the district was divided, and their powers were distributed between a new body of commissioners constituted by that Act; the Commissioners of Works and Public Buildings, and certain parishes mentioned in the Act. With regard to lighting, many of the parishes of the metropolis had adopted the Lighting and Watching Act, 3 & 4 Will. 4, c. 90, which still regulates their liability in respect of lighting rates. A portion of the parish of St. Leonard Bromley, now made part of the Poplar district, was formerly within the sewers commission for the levels of Havering and Dagenham, and the commissioners acting under that commission continued to collect rates and exercise powers over it for some time after the Metropolis Local Management Act came into operation; but a new commission has since been issued for those levels, and the part of the parish of St. Leonard Bromley referred to was omitted from its limits. Woolwich was within the sewers commission east of Lombard's Wall, and was, as regards paving, &c., subject to the provisions of a local Act. In the year 1852 it was constituted a district under the Public Health Act, and placed under the management of a Local Board of Health, which body still carries on all local works within the district; but main sewerage is, by the Metropolis Local Management Act, subjected to the control of the Metropolitan Board of Works, and the relation of the Local Board of Health to that Board is, as regards assessments and other matters, assimilated to that of the vestries and district boards in the other parts of the metropolis. The

(*a*) See clauses, p. 581, *post*, Appendix.

turnpike roads north of the Thames are under the management of the commissioners acting under the Consolidating Act, 7 Geo. 4, c. 143, and there are several turnpike trusts south of that river. In enumerating the statutes making provision for the health and well-being of the community it is also necessary to refer to the Nuisances Removal Act, the Acts relating to Public Baths and Wash-houses, to the Registration and Inspection of Common Lodging-houses, and to Extramural Interment, and the burial of the dead in general. It should also be borne in mind in examining the local laws of the metropolis that many special provisions affecting roads, sewers, and other matters appertaining to the functions of the administrative bodies to which the local management of the metropolis is entrusted are contained in private Acts of parliament, such as those relating to Canal, Railway, Water, Gas, Telegraph, and other Companies, many of which supersede or control the provisions of the general law.

For some years previous to 1847, questions affecting the health of the community had engaged a large share of public attention, and the results of laborious and intelligent investigation upon subjects embraced within the range of such inquiries were extensively circulated. In 1843 the Poor Law Commissioners, who had been appointed to inquire into the sanitary condition of the labouring population, drew attention, in the Report of their Secretary, Mr. Chadwick, to the defective state of the sewerage and drainage of the metropolis, and to the inadequacy of the existing law to meet the exigencies of the case. The reports of the commissioners appointed to inquire into the state of large towns and populous districts appeared in 1844 and 1855, and disclosed the evils attending defective drainage, neglect of cleansing and ventilation, and the want of proper supplies of water. The commissioners for inquiring into the means of improving the health of the metropolis made their report in November, 1847, recommending, amongst other things, that the administration of the laws of sewers in the separate districts should be confided to one body of commissioners for the whole metropolis, and suggesting a general survey of the metropolitan districts. In the same month the several separate commissions of sewers were superseded, and new commissions were issued addressed to the same body of commissioners. In September, 1848, was passed the Metropolitan Sewers Act, 1848, 11 & 12 Vict. c. 112, which authorized the Queen to issue one commission

for the whole of the parts comprised in the then existing separate commissions, and to include within it the district subject to the Regent Street commissioners acting under 5 Geo. 4, c. 100, and any other parts not more than twelve miles distant from St. Paul's Cathedral which might be named. By this Act all local Acts relating to the former commissions were repealed. The persons to be named in the commission, together with the Lord Mayor and four others to be appointed by the Mayor, Aldermen, &c., in Common Council, were constituted the Metropolitan Commissioners of Sewers, and were empowered to require the Commissioners of Sewers for the city of London to execute works within the city limits with certain special provisions as to their cost; and the Lord Mayor and the other city members of the commission were authorized to sit and vote at all courts of sewers on questions relative to the exercise of powers affecting the city. The Act incorporated, with certain exceptions, the powers and provisions of the Statute of Sewers, 23 Hen. 8, c. 5, and of the Acts confirming, explaining, and amending that statute. The first commission issued under the new Act was dated in January, 1849, and it included the same limits as the former separate commission, together with the Regent Street and Regent's Park district; but the second commission, issued in October, 1849, added to its other districts the parish of Chiswick. The Commissioners, under a provision contained in the Act, limited the exercise of their powers to what was termed their active jurisdiction; but the limits of that jurisdiction were enlarged, and shortly after the passing of the Act it included an area of 112 square miles. This was divided into separate sewerage districts or levels, some of which had been determined under the former commissions, whilst others were newly formed under the provisions of this Act. The duration of the Act was limited to two years from its passing, and to the end of the then next session of parliament. It was from time to time renewed until the passing of the Metropolis Local Management Act in 1855, which continued it till that Act came into operation, when it expired. The series of Acts for continuing and amending the Metropolitan Sewers Act, 1848, were 12 & 13 Vict. c. 93; 14 & 15 Vict. c. 75; 15 & 16 Vict. c. 64; 16 & 17 Vict. c. 125; and 17 & 18 Vict. c. 111. An Act was also passed for a special object in 1855, viz., 18 Vict. c. 30. Under one or other of the Acts enumerated, the powers of the commissioners were extended as regarded the enforcement of house drainage, the

levying of charges for default and improvement rates, compelling contributions to the cost of works, and other objects. One of the Acts referred to authorized the appointment of a chairman and deputy-chairman, the former with a salary; and with the view of removing objections to the borrowing powers of the commissioners on the ground that the Acts imposed no limit on those powers, the sums which they were authorized to borrow on the security of the rates were restricted first to £300,000 and afterwards to £600,000.

Some of the earlier works of the commission failed in consequence of special circumstances which arose in the course of their execution, but upon the whole the measures originated by those commissioners were productive of a large amount of public benefit. The subterranean survey deserves especial notice as a work of the highest utility, as without it the preparation of an effectual scheme of drainage would have been wholly impracticable. After the borrowing powers of those commissioners were rendered effectual by the intervention of the Legislature they executed a large number of works, which afforded extensive relief to the districts affected by them. But though they performed their duties conscientiously and well, there is no doubt that the system under which they were appointed was open to objection. That system, which wholly ignored the constitutional relation between taxation and representation, and under which the ratepayers had no voice in the election of those by whom their affairs were administered, could only be of limited duration.

The condition of a large part of the metropolis, as regarded its paving and lighting and other subjects of municipal management, was in the highest degree unsatisfactory. Some of the metropolitan parishes which had a representative constitution, were well and economically managed, but a large number of them were under the control of self-elected bodies, who were to a great extent irresponsible to the ratepayers; and whilst no effectual provision was made for the main objects for which they were appointed, the districts under their charge were burdened with a large expenditure and heavy debts. The commissioners appointed in 1853 to inquire into the state of the Corporation of the City of London, had, in their report, already directed their attention to the means of giving a municipal organization to the metropolitan districts, and considered whether it was practicable to effect such an organization by means of a wider extension of the present boundaries of the

city. This notion in the result was rejected, and the report recommended a distribution of the metropolis into municipal districts and the creation of a metropolitan board of works to be composed of a limited number of members deputed to it from the council of each metropolitan municipal body, including the corporation of the city, to which should be confided the management of public works in which the metropolis had a common interest. The comprehensive measure introduced in 1855 by Sir Benjamin Hall, then President of the General Board of Health, gave effect to many of the views expressed in that report, and also embodied other provisions essential to an effectual system of local management of the districts to which it applied. It will be convenient in this place to give an abstract of its chief provisions. The twenty-three larger parishes were to have a separate system of administration under vestries; and the other parishes and places were grouped into districts, and to be managed by district boards. The metropolis, as defined by the Act, is co-extensive with the district of the Registrar-General. Eighteen vestrymen were to be elected for every parish in which the number of rated householders should not exceed 1,000, with six additional vestrymen for every parish in which the number of rated householders should exceed 1,000, and twelve additional vestrymen for every parish in which the number of rated householders should exceed 2,000, and in the proportion of twelve additional vestrymen for every thousand rated householders, but so as not to exceed 120 in all. The incumbent and churchwardens were to be a part of the vestry. Parishes containing more than 2,000 rated householders were to be divided into wards. The qualification for a vestryman was the being rated to the relief of the poor on a rental of not less than £40 a year, and he was required to be the occupier of property in the parish; but where the number of assessments at £40 did not exceed one-sixth of the total number of assessments, a £25 rental was sufficient. Members of the vestry were to be elected by the rated parishioners, and the district board was to be elected by the vestries mentioned in Schedule (B). A body called the Metropolitan Board of Works was constituted. Its members were to be elected by the Corporation of London, the vestries in Schedule (A), and the district boards. The Metropolitan Board, vestries in Schedule (A), and district boards were incorporated. The members of the Metropolitan Board first elected were to appoint a chairman with a salary of not less than £1,500 or more than £2,000 per annum.

The metropolitan board were charged with the maintenance of the main sewers, and with the execution of works for intercepting sewage from the Thames, and were empowered to make orders for maintaining the main and general sewerage, placing streets in more than one parish under one management, naming streets and numbering houses, preserving the regular line of buildings, and for other objects. They were authorized to make, widen and otherwise improve streets, and to effect other objects of public benefit; but when the estimated cost of works exceeded £50,000, they were to be approved by the Commissioners of Her Majesty's Works, &c., and when such cost exceeded £100,000 the sanction of Parliament was rendered necessary. The plan of the works for intercepting sewage from the Thames must be approved by the Commissioners of Works and Public Buildings. The vestries and district boards were to maintain existing local sewers, and construct new ones with the previous approval of the Metropolitan Board. The liabilities of individuals *ratione tenuræ*, and on other grounds, were preserved. Various powers were conferred upon the vestries, &c., for enforcing house drainage and abating nuisances. The duties, powers, and authorities relating to the paving, lighting, watering, cleansing, or improving parishes and districts, and to the regulation, government, or concerns of any parish or part, except such as related to the affairs of the church or the management or relief of the poor, &c., were vested in the vestries and district boards. But the Act contained a saving of the powers of certain commissioners for the maintenance and management of squares, streets, &c., and for other objects. The powers and duties of surveyors of highways were assigned to the vestry and district boards; they were to be the local authority for executing the Nuisances Removal Act; the various powers were conferred upon them for regulating streets, preventing injurious interference with the roads or pavements, and the enforcement of sanitary measures. Certain auxiliary powers were given to the boards and vestries for the execution of works. The rates to be levied were a sewers rate, a general rate, and, in some parishes or parts, a lighting rate. The debts and liabilities of the former sewers commissions and paving boards were continued a charge on the districts to which they originally belonged. Borrowing powers were given to the Metropolitan Board and to the vestries and district boards with the consent of the Metropolitan Board. Provisions were made for the auditing of accounts.

The framers of this measure brought to the performance of their duty extensive knowledge of the multifarious subjects it embraced within its range, and sound judgment in dealing with them; and, considering the magnitude and diversity of the interests affected by it, the special nature of many of its provisions, and the other difficulties of the task, it must, upon the whole, be pronounced a judicious and effectual measure. But it could not be expected that an Act dealing with such a variety of interests, and affecting the provisions of so many local Acts, should be free from defects. Experience showed that some of its provisions required amendment, and the Acts 19 & 20 Vict. c. 112, and 21 & 22 Vict. c. 104, were accordingly passed. The former, amongst other provisions, declared that all duties, powers, and privileges, including such as related to the affairs of the church or the management or relief of the poor which might be exercised by any open or elected or other vestry, should, with certain exceptions, be deemed to have become vested in the vestries appointed under the original Act. The latter repealed that enactment, by which the approval of Her Majesty's Commissioners of Works was required before any scheme of main drainage could be carried out; and it empowered the Metropolitan Board to execute works for the object in question according to such plan as they might deem proper. It was also made sufficient that the works should have the effect of preventing sewage passing into the Thames *within*, instead of *in* or *near* the metropolis, as provided by the first Act. Works might be constructed through, along, over, or under the bed, bank, and shores of the Thames. The Metropolitan Board were empowered to borrow three millions sterling on bonds, debentures, or other securities, and the Commissioners of the Treasury were authorized to guarantee payment of principal and interest. A main drainage rate of 3*d.* in the pound on the basis of the county rate was created, and all parts of the metropolis were to be regarded as equally benefited by the expenditure. Works on the bed and foreshore of the Thames were to be subject to the approval of the Admiralty and of the conservators of the Thames. The period for the completion of the main drainage works was extended from the 31st December, 1860, till the 31st December, 1863. These works, which are of vast magnitude and extent, were immediately commenced on the passing of the Act, and they are in active progress. These, as also the other extensive operations of the Board, are explained in their

report of their proceedings in the execution of the Acts during the past year presented to both Houses of Parliament, conformably to section 200 of 18 & 19 Vict. c. 120. In the course of experience, further obstacles to the effectual working of the original Act were encountered. An important question arose between the Metropolitan Board and the vestries and district boards, as to the incidence of the debts contracted under the former sewers commissions. These were apportioned by the Metropolitan Board among the parishes and parts constituting the old sewerage districts in the ratio of the rateable value of the property within them. Some of the parishes deemed themselves aggrieved by this apportionment, which imposed upon them the cost of works, which, though executed within the same district were not within the local limits of the parish, and urged to Board to alter it. The Board acceded, and prepared a new distribution of the debts, which they embodied in an amending bill. The alterations suggested by the Board in relation to the re-distribution of these debts were, with some exceptions, rejected by the Special Committee of the House of Commons, to which the bill was referred, and, with those exceptions, the original apportionment is still in force. The powers of the Metropolitan Board for compelling prompt payment of their precepts were found insufficient. The provisions of the original Act, directing a different mode of assessment for the expenses of maintaining main sewers from that which applied to the costs of new thoroughfares, and from that which was subsequently authorized with respect to the cost of the main drainage works, were found anomalous and inconvenient. Further powers were required for the construction of accommodation and subsidiary works. The regulations respecting the breaking up of turnpike roads were unnecessarily restrictive; the provisions for preventing wrongful interference with sewers were found inadequate; and additional powers were required for compelling the submission of plans, &c., previously to the construction of sewers; for compelling overseers to enforce payment, by private parties, of the expenses of paving new streets; for imposing on the owners the cost of sewering streets newly laid out; for enforcing contributions to the cost of sewers by parties draining into them; and for abating nuisances and enforcing adequate sanitary regulations in general. It may be added that there was no appeal against the decision of the auditors of accounts; and modifications of the provisions of the original Act were needed in other respects. The

provisions to which the foregoing observations apply are pointed out in the notes to the several sections under which they arise, and the nature and scope of the amendments introduced to meet these and other requirements, and the reasons on which they are founded, are fully explained. Many of the clauses of the bill, however, underwent hasty alteration during its progress through Parliament, and new ones were introduced without its being clearly ascertained whether or not they were consistent with the general provisions of the measure. The consequence has been that several of its enactments are of an incongruous character, and their true construction may probably hereafter be attended with difficulty. But notwithstanding this, the last amending Act has, upon the whole, given to the boards and vestries considerable additional facilities for the performance of their functions. A good deal of discussion has taken place as to the mode in which the members of the Metropolitan Board are chosen, and an impression seems to be gaining ground that direct election by the ratepayers would be preferable to the indirect election by the vestries and district boards which now prevails. The Select Committee of the House of Commons on Metropolis Local Taxation, appointed in 1861, express themselves in their report to this effect. They state that whilst the evidence before them tended to show that the Metropolitan Board, as at present constituted, was fully competent to discharge its duties, greater authority would, in their opinion, attach to its deliberations if its members were elected by the ratepayers directly. Whether that view of the Committee is or is not well founded, the preponderance of opinion among those familar with the working of the Board is, that though an alteration of the mode of election might not send better men to the Board, it would, at all events, secure them greater independence of action. As regards the functions of the vestries and district boards, their periodical reports under the 198th section of the statute referred to, show the large paving and other works which have been executed, and they constitute an instructive record of sanitary activity in the construction of local sewers, the extension of house drainage, the inspection of the dwellings of the poor by their medical officers, and the removal of trade and other nuisances prejudicial to health. One great source of difficulty with which the metropolitan and other boards and vestries have still to contend, however, remains to be mentioned, and that is the means of providing funds for the extensive improvements demanded by the exigencies of metro-

politan traffic. Previously to the passing of the Metropolis Management Act, public improvements had for the most part been effected by the executive government by means of parliamentary grants, or by the Corporation of London, out of its own funds, or to a great extent under powers created by special Acts of Parliament. The Metropolitan Board, unlike various municipal corporations, is not in possession of revenues derived from estates, or from tolls, dues, fees, or the like; and, the whole of the works which have hitherto been executed have been paid for out of the proceeds of direct rates upon house property (*a*). The Board did not cease to press their claims in this respect upon the attention of the Government and of Parliament (*a*), and the result has been to place at their disposal means derived from other sources for executing one of the most important of the undertakings required for the improvement of the metropolis, viz., the Thames embankment. The London Coal and Wine Duties Continuance Act, 1861, 24 & 25 Vict. c. 42, after providing that those duties should, subject to the qualification expressed in the Act, be continued until the 5th July, 1872, enacted that the duties of 1*d.* per ton on coal, culm, and cinders, and of 4*s.* per tun on wines, and of 8*d.* on coal, culm, and cinders, should, so soon as all charges on the London Bridge Approaches Fund should be satisfied, be paid to the account of the Thames Embankment and Metropolis Improvement Fund, and be applied to the improvement of the metropolis, as might thereafter be directed by Parliament. The execution of this important undertaking has since been confided by Parliament to the Metropolitan Board, the Thames Embankment Act, 25 & 26 Vict. c. 93, empowering them to execute the necessary works, and the Commissioners of the Treasury being authorized to provide the requisite sums out of, or by charge upon, the Thames Embankment and the Metropolis Improvement Fund. This noble work will, however, be incomplete unless it be accompanied or speedily succeeded by an embankment on the south side of the river.

(*a*) See letter from Mr. Thwaites, chairman of the Metropolitan Board of Works, to members of Parliament representing metropolitan constituencies, dated the 18th April, 1859, pointing out the limited resources of the Board, and the vast costs of the improvements required for the purposes of metropolitan traffic.

The boards and vestries appointed to watch over the local administration of the metropolis have large powers and commensurate responsibilities; and whilst past experience justifies the anticipation that their powers will continue to be exercised with judgment and discretion, it is earnestly to be desired that their public usefulness may be promoted by mutual confidence and increased harmony of action.

LONDON,
November 1, 1862.

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AN ACT

FOR THE BETTER LOCAL MANAGEMENT OF THE METROPOLIS(a).

18 & 19 VICT. CAP. 120.

14TH AUGUST, 1855.

WHEREAS it is expedient that provision should be made for the better local management of the metropolis (*b*) in respect of the sewerage and drainage, and the paving, cleansing, lighting, and improvements thereof (*c*): Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:—

(*a*) This Act has been amended by 19 & 20 Vict. c. 112, 21 & 22 Vict. c. 104, 25 & 26 Vict. c. 102, 38 & 39 Vict. c. 33, and 41 & 42 Vict. c. 32 (Metropolis Management and Building Acts Amendment Act, 1878). In addition to these, numerous other Acts have been passed relating to the powers and functions of the metropolitan and district boards and vestries, a reference to which will be found in the notes to sections 43 and 67, and other sections of this Act. A selection from the more important of these statutes will be found in the appendix.

(*b*) By the 250th section "the metropolis" is defined to include the city of London and the parishes and places mentioned in the schedules (A), (B), and (C) to the Act; and the city of London includes all parts now within the jurisdiction of the commissioners of sewers for the city of London. The 11 & 12 Vict. c. 163 (the City of London Sewers Act, 1848), s. 262, enacts that the word "city" shall mean the city of London and the liberties thereof, and shall include such parts of Holborn, the Minories, and Aldersgate Street, as are or have been usually treated as being within the liberties of the city, and the courts and alleys leading into the same or communicating therewith, and also the north side of Eldon Street, formerly called Broker Row, Moorfields, and the courts and alleys leading into the same or communicating therewith, and all precincts and places within the city of London or the liberties thereof. See reference in note to section 135, *post*, to subsequent Acts making provision for the drainage of certain localities not situate within the area under the control of the Metropolitan Board of Works.

(*c*) See section 90, transferring, with certain exceptions, to the vestries and district boards constituted by this Act, in addition to the paving and other matters specified, all other duties, powers, and authorities in anywise relating to the regulation, government, or concerns of parishes, &c., and the 3rd section of 19 & 20 Vict. c. 112, *post*, transferring to them save as

Section 1.

Election of Vestries and Auditors in Parishes in Schedules (A.) and (B.)

1 & 2 Will. 4, c. 60, repealed so far as regards parishes in schedules (A.) and (B.) (*a*).

1. The Act of the session holden in the first and second years of King William the Fourth, chapter sixty, "For the better Regulation of Vestries, and for the Appointment of Auditors of Accounts in certain Parishes of England and Wales," shall be repealed, from and after the passing of this Act, so far as regards any parish mentioned in either of the Schedules (A.) and (B.) to this Act: Provided always, that the vestry and auditors already elected for any such parish under the said Act shall continue to be such vestry and auditors until the first election of vestrymen and auditors for such parish under this Act has taken place, but no longer (*b*); and the provisions of the said Act of King William the Fourth shall continue applicable to every such vestry and to their proceedings, and the books in which the same are entered, and to such auditors and their proceedings accordingly.

Vestries in parishes named in either of the schedules (A.)

2. The vestry in every parish mentioned in either of the schedules (A.) and (B.) to this Act shall consist of a certain number of persons qualified and elected as herein provided; (that is to say) eighteen vestrymen for every parish in which the number of rated householders (*c*) shall not exceed one thousand; and six additional vestry-

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therein otherwise provided the duties, powers, and privileges (including such as relate to the affairs of the church, or the management or relief of the poor, or the administration of any money or other property applicable to the relief of the poor) which might have been performed or exercised by any open or elected or other vestry, &c.; and see as to the purposes and objects of the Act, as collected from its preamble and enactments, the judgment of Lord Justice Turner in *Carter* v. *Cropley*, 26 L. J. Ch. 247.

(*a*) The Act here repealed so far as regards parishes mentioned in schedules (A.) and (B.) is that commonly known as Hobhouse's Act, from which several of the provisions in the present Act relating to the constitution of vestries have in substance been adopted. See on the construction of that Act *R.* v. *St. Pancras*, 1 A. & E. 80; *R.* v. *St. Pancras*, 5 N. & M. 219; *R.* v. *St. Marylebone*, 5 A. & E. 268; *R.* v. *St. Pancras*, 11 A. & E. 15; and the cases cited, Chit. Stat. vol. 3, p. 1518, *et seq. notes.*

(*b*) As to first election of vestrymen and auditors, see sections 7, 11, *post.*

(*c*) In a case in which A. and his partner had a dwelling house in a town with a counting-house attached to it, the partners using the counting-house daily for their business, and the dwelling-house being occupied by a clerk of the firm and the rent and taxes being paid by the partnership, it was held that each of the partners was a *householder* within 26 Geo. 3, c. 38; *Rex* v. *Hall*, 1 B. & C. 123. So also under similar circumstances, that each of the partners of a firm was a *householder* within 43 Eliz. c. 2, and liable to serve the office of overseer; *R.* v. *Poynder*, 1 B. & C. 178. Where a servant occupies premises of his master without paying rent, to determine whether he is a householder within that statute, the question is, whether the occupation is subservient and necessary to the service; if it is, the occupation is that of the master; if not, it is that of a tenant, and the servant is a householder; *R.* v. *Spurrell*, L. R. 1 Q. B, 72. See also *Smith* v. *Overseers of Seghill*, L. R. 10 Q. B. 422; *Hughes* v. *Overseers of Chatham*, 5 M. & G. 54; and *Ex parte Overseers of Paddington*, 3 Cox Mag. Ca. 42. As to what constitutes a person an inhabitant householder within the Municipal Corporation Act, refer to *R.* v. *Mayor of Exeter*, L. R. 4 Q. B. 110, 114, and see *R.* v. *Boycott*, 30 J. P. 406. As to majority of householders

Section 2.

and (B.) to consist of not less than 18 or more than 120 persons qualified and elected as after provided.

men, that is, twenty-four vestrymen for every parish in which the number of rated householders shall exceed one thousand; and twelve additional vestrymen, that is, thirty-six vestrymen, for every parish in which the number of rated householders shall exceed two thousand; and so on at the proportion of twelve additional vestrymen for every thousand rated householders: Provided always, that in no case the number of vestrymen shall exceed one hundred and twenty; provided also, that the incumbent and churchwardens (*d*) of each such parish shall constitute a part of the vestry, and shall vote therein, in addition to the elected vestrymen: provided also, that every district rector now constituting in any such parish a part of the vestry thereof, shall continue to constitute a part of the vestry thereof under this Act: provided also, that where in any parish the whole number of persons qualified to be vestrymen shall not amount to eighteen, the vestry thereof shall consist of so many persons as are so qualified, anything in this Act to the contrary notwithstanding.

Such parishes with more than 2,000 rated householders to be divided into wards.

3. Each of the said parishes which at the time of the passing of this Act (*e*) contains more than two thousand rated householders shall be divided into wards; and it shall be lawful for such person or persons as may be appointed for this purpose as herein provided to determine and set out, on or before the tenth day of October next, the number, extent, limits, and boundary lines of such wards, but so nevertheless that no ward shall contain less than five hundred rated householders, and that the whole number of wards in any parish shall not exceed eight; and the person or persons setting out such wards in any parish shall apportion among the several wards the number of vestrymen to be elected for such parish, and shall, in assigning the number of vestrymen to each ward, have regard, as far as in his or their judgment it is practicable, as well to the number of persons rated to the relief of the poor in each ward as to the aggregate amount of the sums at which all such persons are rated; and the number of vestrymen assigned to each ward shall be a number divisible by three; and a copy of the particulars of such division and apportionment shall be forthwith transmitted to one of Her Majesty's principal secretaries of state, and also to the vestry clerk of the parish to which such division and apportionment relate; and if Her Majesty, by the advice of her privy council, approve of such division and apportionment, the particulars thereof shall be published in the London Gazette (*f*); and the parish shall, after such publication, be deemed to be divided into such wards so determined and set out, and such division shall continue and be in force until the same

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for the purposes of a petition for a charter of incorporation, refer to *R.* v. *Mayor of Aberavon*, 28 J. P. 789.

(*d*) Where one of a number of trustees, directed by a local Act to be filled up at certain intervals to *fifty-one over* and *besides* the vicar, churchwards, &c., became churchwarden, it was held that no vacancy was thereby created; R. v. *Trustees of Kensington*, 2 B. & Ad. 740.

(*e*) The omission in this Act to make provision for a future increase of rated householders is supplied by section 41 of 25 & 26 Vict. c. 102, *post*, which provides for the division into wards, by the metropolitan board, of parishes not divided under this Act. Under that enactment the parishes of Hampstead, Battersea, and Wandsworth have been divided into wards.

(*f*) The supplement to the London Gazette of 19th October, 1855, contains the orders in council approving the division and apportionment made pursuant to this provision.

Section 3.

be altered as herein provided; and the number of vestrymen assigned to each ward shall be the number to be elected for such ward until altered as aforesaid: Provided always, that if Her Majesty, by advice of her privy council, do not approve such division and apportionment, such publication as aforesaid shall nevertheless be made, and such division and apportionment be in force for the purpose of any election under the provisions of this Act, until such time as Her Majesty, by advice of her privy council, upon further information and report from any such person or persons, definitely approve the division of such parish into wards, and of the number of vestrymen assigned to each ward, in manner hereinbefore mentioned: Provided also, that where any parish is already divided into wards under any local Act such parish shall be deemed to be divided into such wards for the purposes of this Act, without any division of such parish into wards being made as hereinbefore provided, but the number of vestrymen to be elected for such parish shall be apportioned as aforesaid among the wards of such parish by such person or persons as may be appointed for that purpose as herein provided.

Power to secretary of state to appoint persons to set out the wards, and apportion number of vestrymen to be elected.

4. One of Her Majesty's principal secretaries of state shall, as soon as conveniently may be after the passing of this Act, appoint not more than four fit persons, the names of such persons to be published in the London Gazette, to set out the wards into which the said parishes are by this Act directed to be divided, and to apportion the number of vestrymen to be elected for such parishes respectively among such wards, and also to apportion the number of vestrymen to be elected for any parish already divided into wards as aforesaid among such wards; and any one or more of such persons may be appointed to act as aforesaid separately from any other or others of them as such secretary of state may see fit; and such secretary of state shall, in case circumstances appear to him so to require, appoint any other fit person or persons in the place of or in addition to any such person or persons originally appointed under this provision; and every person appointed to set out such wards shall be paid at a rate not exceeding the sum of £5 5s. for every day that he is employed by virtue of such appointment, and the amount payable to him in respect of such employment in each parish shall be determined and certified by the commissioners of Her Majesty's treasury, and the amount so certified shall be paid out of the poor rates of the parish.

If relative amounts of population of wards vary in any future census, the numbers of vestrymen may be altered (*a*).

5. When at any time upon any account taken of the population by the authority of parliament, the relative numbers of the inhabited houses in the several wards of any parish divided into wards as aforesaid are found to have varied from those shown by the last previous census, it shall be lawful for the metropolitan board of works, upon the application of the vestry or any ratepayers of such parish, to alter the number of vestrymen assigned to such wards or any of them, but so that the number of vestrymen assigned to each ward shall be a number divisible by three.

Qualification of vestrymen.

6. The vestry elected under this Act in any parish shall consist of persons rated or assessed (*b*) to the relief of the poor upon a

(*a*) As to future division of parishes into wards, see note to section 3, *ante*.

(*b*) By the amending Act, 19 & 20 Vict. c. 112, s. 4, *post*, an occupier of a tenement may claim to be rated to the poor rate, whether the landlord be or be not liable to be rated in respect thereof, and by section 6 an occupier rated is deemed to be rated under the Act and shall be entitled to vote in elec-

Section 6. Note.

tions of vestrymen, and shall, for the purposes of the Act, be deemed a ratepayer, subject to the proviso therein expressed. The 31 & 32 Vict. c. 122, s. 38, provides for the rating of persons coming into occupation (after the making of a rate) of new houses, &c., incomplete or unfit for occupation, or not entered in the valuation list in force when the current rate was made. And 32 & 33 Vict. c. 41 (Poor Rate Assessment and Collection Act, 1869) provides for payment of rates by owners, and rating owners instead of occupiers, and enacts that every payment of a rate by the occupier, notwithstanding the amount may be deducted from his rent, and any payment of a rate by the owner in the manner defined shall be deemed a payment of the poor rate by the occupier for the purpose of any qualification or franchise, depending as regards rating upon the payment of the poor rate. It also contains provision for rating successive occupiers and persons coming into occupation of unoccupied hereditaments, &c. The Parliamentary and Municipal Registration Act, 1878, section 14, recites section 14 of the Poor Rate Assessment and Collection Act, 1869, as to entering occupiers names in rate book, and declares that it shall not be deemed to apply exclusively to cases where an agreement has been made under section 3 of the Act, but shall be of general application. It had been previously decided under a local improvement act that a person did not possess the requisite qualification for a commissioner by rating who was not rated in any rate made, allowed, and published before the election, although before the election and after the allowance and publication of the last rate he had been entered as rateable in a list added to the rate, and had paid a proportional part of it; *R.* v. *Eddowes*, 1 Ell. and Ell. 330; see also *Richards* v. *Gladwin*, 27 L. J. M. C 193. By the 17th section of the Poor Rate Assessment and Collection Act, 1869, a poor rate (in the metropolis extended to every rate made by the overseers and chargeable upon the same property as the poor rate) shall be deemed to be made on the day when it is allowed by the justices, and if the justices sever in their allowance, then on the day of the last allowance. Under the Representation of the People Act, 1867, the rate entitling to registration must have been entirely made, *i.e.*, signed, allowed, and published within the qualifying year; *Jones* v. *Bubb*, 5 Cox Mag. Ca. 273; see also *Ainsworth* v. *Creeke*, L. R. 4 C. P. 470. In 32 & 33 Vict. c. 67, the Valuation (Metropolis) Act, 1869, the term "ratepayer" is defined to mean every person who is liable to any rate or tax in respect of any property entered in any valuation list.

Where A. occupied jointly with B., the latter alone being assessed, and A. *bonâ fide* paid the rate, but without being called upon to do so, he was held not to be rated within 2 Will. 4, c. 45, s. 27; *Moss* v. *Overseers of Lichfield*, 7 M. & Gr. 72; and see *R.* v. *Hulme*, 4 Q. B. 538. A person was decided not to be disqualified for being put on a borough register of voters because he had not paid some arrears of a poor rate to which he was not rated, but only became liable to pay as incoming tenant by 17 Geo. 2, c. 38. s. 12; *Flatcher* v. *Boodle*, 34 L. J. C. P. 77.

The defendant was joint occupier with his father and brother of hereditaments within a metropolitan parish. A rate was made in April, 1876, upon the father only. In May the defendant was elected a vestryman and declared by the inspectors after objection to be duly qualified and elected. In June he sat and voted as a vestryman. In July he caused his own name to be inserted in the demand note made in April, and in October, jointly with his father, paid the rate. It was held that the defendant was in May neither "rated" nor "assessed" within the meaning of this enactment, and was not qualified as a vestryman, that the decision of the inspectors was not conclusive, that by sitting and voting in June he had incurred the penalty imposed by section 54, and that his liability to that penalty was not taken away upon the subsequent payment of the rate; *Goodhew* v. *Williams*, L. R. 3 C. P. D. 382, where it is said by one of the judges that a similar rule of construction must be applied to this enactment as in the case of the parliamentary registration acts. Held also, the liability to this penalty was not taken away by section 4 of 19 & 20 Vict. c. 112, which, see *post*.

Section 6.

rental (*a*) of not less than £40 per annum; and no person shall be capable of acting or being elected as one of such vestry for any parish unless he is the occupier of a house, lands, tenements, or hereditaments in such parish, and be rated or assessed as aforesaid upon such rental as aforesaid within such parish: Provided always, that in any parish in which the number of poor rate assessments at £40 or upwards does not exceed one-sixth of the whole number of such assessments (*b*) it shall not be necessary, in order to qualify a person to be a vestryman, that the amount of rental upon which he is rated or assessed as aforesaid exceed £25: Provided also, that the joint occupation of any such premises as aforesaid, and a joint rating in respect thereof, shall be sufficient to qualify each joint occupier in case the amount of rental on which all such occupiers are jointly rated will, when divided by the number of occupiers, give for each such occupier a sum not less than the amount hereinbefore required.

As to the first election of vestrymen under this Act.

7. The first election of vestrymen under this Act in every parish shall be holden in the month of November next after the passing of this Act, and between the fifth and twenty-first days of that month, and the day on which such election shall commence shall be appointed by the churchwardens of the parish, and twenty-one days previously to the day of election notice of such election

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Where several blocks of buildings were each divided structurally into different suites of rooms, the respective suites were held to be rightly treated as separate hereditaments, and the tenants properly assessed to the poor rate as occupiers; *R.* v. *St. George's Union*, L. R. 7 Q. B. 90. But for the purposes of the inhabited house duty, each block must be treated as one dwelling-house; *Att. Gen.* v. *Mutual Tontine Westminster Ch. Assoc.*, L. R. 10 Ex. 305.

(*a*) The 19 & 20 Vict. c. 112, s. 8, *post*, declares that the amount specified in that column in the schedule to the Parochial Assessment Act, 6 & 7 Will. 4, c. 96, which is headed "Rateable Value," shall be deemed the rental for the purposes of this Act. See this question raised, before the passing of the amending Act, in *R.* v. *Churchwardens of St. Mary, Lambeth*, 20 J. P. 276. The annual value for the qualification of a town councillor was held to mean rateable value, and not gross estimated rental; *Baker* v. *Marsh*, 24 L. J. Q. B. 1, and see under a local Act, *Easton* v. *Alce*, 7 H. & N. 452. By 32 & 33 Vict. c. 67 (Valuation Metropolis Act), the valuation list under the Act shall be conclusive evidence of the gross and rateable value of the hereditaments included therein, and of other matters for the purposes mentioned, including, amongst others, that of determining the qualification of a vestryman and auditor under this Act. To render a party eligible under section 20 of Hobhouse's Act, 1 & 2 Will. 4, c. 60, it was held not to be necessary that he should be rated in respect of property in his own possession, but that the rental might be made up of tenements separately held and not in his occupation; *R.* v. *St. Pancras*, 1 A. & Ell. 80. A person who occupied several pieces of land under different landlords and was separately rated for them, was allowed to add their rateable values together for the qualification for a county vote under 30 & 31 Vict. c. 102; *Huckle* v. *Piper*, 41 L. J. C. P. 42. See disqualification of an alderman of a municipal borough by ceasing to occupy the qualifying premises, *Ex parte Birkbeck*, L. R. 9 Q. B. 256; and as to what was held to be part of a house for the purpose of rateability under a local Act and properly included in the rate; *Hole* v. *Commissioners of Milton*; *Walton* v. *Same*, 31. J. P. 804.

(*b*) It would seem that where a number of distinct tenements are in the rate book included in the same assessment, that constitutes one assessment for the purposes of this computation.

shall be given in manner hereinafter directed (*c*) concerning notice of election of vestrymen and auditors, and the next such election shall take place on such day in the month of May in the year 1857 as the vestry shall appoint, and every subsequent election shall take place annually in the month of May in every year as the vestry appoint. Section 7.

The full number of vestrymen to be chosen at first election, and existing vestries superseded.

8. At the first such election of vestrymen as aforesaid for any parish, the full number of elective vestrymen of which such vestry is to consist, as hereinbefore mentioned, shall be elected, and such vestrymen, with such other persons as hereinbefore mentioned, shall forthwith be deemed to constitute the vestry of such parish, and shall supersede any existing vestry therein, and exercise the powers and privileges held by such existing vestry (*d*), save as in this Act otherwise provided (*e*); and the authority of such vestry may be pleaded before any justice or justices of the peace, or in any court of law in regard to all parochial property or monies due, or holdings or contracts, or other documents of the like nature, under the control or in the keeping of such existing vestry; and all parish officers or boards shall account to them in like manner as they are by law liable to account to such existing vestry.

As to the term of office of vestrymen elected at first election, and as to future elections.

9. One-third of the vestrymen first elected under this Act in any parish, or, where such parish is divided into wards under this Act, in each ward of such parish, shall go out of office at the time appointed for the election of vestrymen in the year 1857, one other third of them at the time appointed for such election in the year 1858, and the remaining third at the time appointed for such election in the year 1859; and the vestry shall, at some meeting before the time of the election in 1857, determine by lot which of the members first elected shall constitute the one-third to go out of office in the years 1857 and 1858 respectively; and all members from time to time elected at the annual elections after the first election, shall go out of office at the time appointed for the annual election in the third following year, except such members as are elected to supply vacancies occasioned otherwise than by effluxion of time; and such last-mentioned members shall go out of office at the respective times when the terms of office of the members in whose places they are respectively elected would have expired by effluxion of time.

Vacancies to be filled up at annual elections.

10. At every election of vestrymen under this Act, except the first, for any parish or any ward of any parish, the parishioners of such parish entitled to vote in such election (*f*) shall elect as many

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(*c*) See section 26 as to the publication of notices and lists.

(*d*) Where by a local Act making the hamlet of Spitalfields a distinct parish, the rector, churchwardens, and others, were constituted the vestrymen of the parish, and by another local Act they were empowered to make poor rates, it was held that the power of making poor rates possessed by the old vestry was transferred to the new vestry, and that the rates made by the latter were valid, the overseers not being entitled to vote; *Vaughan* v. *Imray*, 28 L. J. M. C. 78. See *Reg.* v. *Rendle*, note to section 3 of 19 & 20 Vict. c. 112, *post*, and notes to section 197, *post*.

(*e*) This provision transfers to the vestries constituted by this Act all the powers of existing vestries, subject to the restrictions in sections 90 and 91, and to the other provisions of the Act. See now the amending Act, 19 & 20 Vict. c. 112, s. 3, *post*, as to the duties, powers, and privileges declared to have become transferred to vestries and district boards under this Act.

(*f*) See section 16.

Section 10. vestrymen as there are vacancies in the vestry, or among the vestrymen elected for such ward, whether such vacancies be occasioned by the expiration of the term of office, or by death or otherwise (*a*).

Appointment of auditors of accounts for parishes in Schedules (A.) and (B.)

11. For every parish mentioned in either of the Schedules (A.) and (B.) to this Act, there shall be elected such number as hereinafter mentioned of the ratepayers of the parish who have signified in writing their assent to serve to be auditors of accounts, which auditors shall be so elected at the same times and in the same manner as members of the vestry; and the number of ratepayers so to be elected auditors in any parish not divided into wards under this Act shall be five, and the number of ratepayers so to be elected auditors in any parish which is divided into wards shall be the same as the number of wards, one auditor being elected in each ward: Provided always, that where the number of wards into which any parish is divided exceeds five, the vestry of such parish shall at their first meeting after the election of auditors as aforesaid, in any year, elect by ballot from among such auditors five of them, and the five persons so elected by ballot shall be the auditors for such parish exclusively of any other person or persons who may have been elected an auditor or auditors for such parish under the provisions herein contained; and a list of the five persons so elected by the vestry shall be forthwith published by the churchwardens in the parish as herein provided: Provided also, that no person shall be eligible to fill the office of auditor of accounts who is not qualified to fill the office of vestryman for the parish (*b*); but no person shall be eligible to fill the office of auditor who is a member of the vestry; and if any person be chosen to be both a member of the vestry and auditor of accounts, he shall be incapable of acting as a vestryman.

As to the term of office of auditor.

12. The auditors first elected under this Act in any parish as aforesaid shall go out of office at the time appointed for the election of vestrymen and auditors in the year 1857, and the auditors then elected and to be thereafter elected shall go out of office at the election of vestrymen and auditors in the year next following their election.

Notice of elections.

13. The churchwardens of every parish mentioned in either of the said schedules (A.) and (B.), which is not divided into wards, shall, on some Sunday at least twenty-one days previously to the day of annual election of vestrymen, cause to be published in such parish as herein provided (*c*) a notice according to the following form:—

(*a*) See as to disqualification of vestrymen, and penalties, section 54; and as to the resignation of office and notification thereof, section 55. A notice of election under the Public Health Act, 1848, which omitted to distinguish between ordinary and casual vacancies, was held bad and the election void; *R.* v. *Rippon*, L. R. 1 Q. B. D. 217; and see *R.* v. *Mayor of Leeds*, 7 A. & E. 963. Refer to provision as to casual vacancies in local boards in the Public Health Act, 1875, Sched II., r. 65.

(*b*) As to qualification of vestrymen, see section 6.

(*c*) See mode of publication, s. 26. In the case of *Howes* v. *Turner*, 1 L. R., C. P. D. 670, where a defective notice had been given by the town clerk with respect to nomination papers under the Municipal Corporations Act, the election was declared void.

Parish of [*here insert the name of parish*]. Section 13.

The parishioners duly qualified according to the provisions of the Act of the session holden in the eighteenth and nineteenth year of the reign of Queen Victoria, intituled "An Act" [*here insert the title of the Act*], are hereby required to meet at ———, on the ——— day of ———, conformably to the provisions of the said Act, and then and there to consider of and elect fit and proper persons to be vestrymen and auditors of accounts of the parish of ——— for the ensuing year [*the words* "for the ensuing year" *to be omitted in the notice of the first election*]; that is to say,

——— members of the vestry,
——— auditors of accounts.

And the churchwardens of every such parish as aforesaid which is divided into wards shall at the time aforesaid cause to be published as herein provided, in each ward of the parish, a notice according to the following form :—

Parish of ———, ward of [*inserting the parish and ward*].

The parishioners duly qualified according to the provisions of the Act of parliament of the session holden in the eighteenth and nineteenth years of the reign of Queen Victoria, intituled "An Act" [*here insert the title of this Act*], are hereby required to meet at ———, on the ——— day of ———, conformably to the provisions of the said Act, and then and there to consider of and elect ——— fit and proper persons to be vestrymen and an auditor of accounts of the parish of ———, for the ward of ———, for the ensuing year [*the words* "for the ensuing year" *to be omitted in the notice of the first election*].

14. Where any parish is divided into wards, the churchwardens, three clear days at least before the day of election, shall appoint in writing under their hands a person to preside at such election as aforesaid in each of the said wards, except any ward in which one of the churchwardens shall preside, and notify such appointment to the vestry clerk of the parish. Churchwardens to appoint persons to preside at ward elections.

15. The rate collectors, or persons appointed by them, shall attend the churchwardens and persons presiding at elections under this Act, and inspectors of votes (*d*), to assist in ascertaining that the persons presenting themselves to vote are parishioners rated to the relief of the poor in the parish, or the respective wards thereof, and duly qualified (*e*) to vote at the election. Rate collectors to assist at the elections.

(*d*) See case of *Goodhew* v. *Williams*, cited in note to section 6, *supra*, where it was said by the Court that the decision of the inspectors as to the qualification of a candidate was not conclusive.

(*e*) It was held in a case under the present Act, that the parishioner, at the time of the election of vestrymen, when his vote was challenged for nonpayment of a church rate, might show that the assessment was not *due* from him at the time of voting, the rate being illegal and void; *Tozer* v. *Child and another*, 25 L. J. Q. B. 337; 6 E. & B. 289. If the churchwardens act *bonâ fide* in rejecting the vote, they are not liable to an action whether the rate be good or bad; but otherwise if with a knowledge that the voter is qualified, his voting paper is maliciously refused; *ibid.*, and see *Cullen* v. *Morris*, 2 Stark. R. 577. See *in the matter of the Election of Vestrymen for St. Clement Danes*, 20 J. P. 131; also *R.* v. *Bidwell*, 17 L. J. M. C. 99. See now the Act 31 & 32 Vict. c. 109, for the

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Form of proceeding at elections.

16. On the day of election of vestrymen and auditors in any parish under this Act the parishioners (*a*) then rated (*b*) to the relief of the poor in the parish, or, where the parish is divided into wards under this Act, in the ward thereof (*c*) for which the election is holden, and who are desirous of voting, shall meet at the place appointed for such election, and shall then and there nominate two ratepayers of the parish, or (if the parish be divided into wards) of the ward for which the election is holden, as fit and proper persons to be inspectors of votes; and the churchwardens, or, in the case of a ward election, such one of the churchwardens as is present thereat, or, where one of the churchwardens is not present, the person appointed by them to preside thereat, shall, immediately after such nomination as aforesaid by the parishioners, nominate two other such ratepayers to be such inspectors; and after such nominations the said parishioners shall elect (*d*) such persons duly qualified (*e*) as may be there proposed for the offices of vestrymen and auditors or auditor; and the chairman

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abolition of compulsory church rates. Where an assistant overseer appointed to perform certain duties, excluding the making, &c., of rates, joined in making a rate, it was decided that the rate was so far valid that the non-payment of it did not disqualify for the borough franchise; *Baker* v. *Lee*, 34 L. J. C. P. 49. See as to registration of owner *R.* v. *Hampton*, 6 B. & S. 923. Where the mayor of a borough erroneously disqualified a candidate for the office of councillor the election was held invalid; *Budge* v. *Andrews*, 42 J. P. 744. The votes for a town councillor who was mayor and returning officer, and therefore was disqualified, were held to be not thrown away, unless the voters knew that the candidate was disqualified in point of law; *R.* v. *Mayor of Tewksbury*, L. R. 3 Q. B. 629.

(*a*) As to meaning of "parishioner," see Nol. P. L. i. 68, *note* (1). It was decided in *Etherington* v. *Wilson*, L. R. 20 Eq. 606, that the term "parishioner" could not be applied to a person taking a small tenement temporarily to obtain a qualification for the purpose of the election of a child to Christ's Hospital, but this decision was reversed on appeal, L. R. 1 Ch. Div. 160, where it was laid down that the expression "parishioner" must be taken in its ordinary sense, namely, that of a person occupying premises which are liable to be rated in the parish.

(*b*) As to what amounts to being rated, see *note* to section 6, and 19 & 20 Vict. c. 112, s. 4, *post*, enabling occupiers to claim to be rated, and section 5 providing that in case of a composition the occupier shall not be bound to pay or tender more than the amount payable under the composition, and section 6 declaring occupiers rated under that Act entitled to vote in the election of vestrymen and auditors. The demand to be rated under the Act should be made on the vestry and not on the overseers; *R.* v. *Islington*, 8 L. T. (N. S.) 231.

(*c*) Under section 6 of 22 Vict. c. 35, where a municipal borough is divided into wards, the person nominating a candidate for a town councillor must be entitled to vote for the particular ward for which he nominates; *R.* v. *Parkinson*, L. R. 3, Q. B. 11.

(*d*) See provision in section 39 of 25 & 26 Vict. c. 102, *post*, where a person is returned to serve as a vestryman for more than one ward, requiring him before the next meeting of the vestry to signify in writing to the clerk the ward he desires to represent. An elector enrolled as a burgess in two wards of a municipal borough is entitled to vote in either, but when he has voted in one he cannot vote in the other; *R.* v. *Harrold*, 39 J. P. 40.

(*e*) That is, rated or assessed to the relief of the poor on a certain rental and occupying a house, &c., in the parish; *Goodhew* v. *Williams*, cited in *note* to section 6, *ante*, and see references in that note. The declaration of the inspectors as to the election is not conclusive; *Ibid.* The mayor of a municipal borough was held not disqualified for the office of town councillor,

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at such meeting shall declare (*f*) the names of the parishioners who have been elected by a majority of votes at such meeting: Provided nevertheless, that no person shall be entitled to join or vote in any such election for any parish, or any ward of any parish, or be deemed a ratepayer thereof (*g*), or be entitled to do any act as such under this Act, unless he have been rated in such parish to the relief of the poor for one year next before the election, and have paid all parochial rates, taxes, and assessments due (*h*) from him at the time of so voting or acting, except such as have been made or become due within six months immediately preceding such voting or acting.

Power to demand a poll, which shall be taken by ballot.

17. Provided always, that any five ratepayers may then and there, in writing or otherwise, demand a poll (*i*) which shall be taken by ballot on the day next following, and shall commence at eight of the clock in the forenoon and close at such hour as hereinafter mentioned; that is to say, at six of the clock in the afternoon in the case of any election to be holden in November, 1855, and at eight of the clock in the afternoon in all other cases; each ratepayer depositing, as hereinafter provided, two folded papers, one of which papers shall contain the names of the persons for whom such parishioner may vote as fit and proper to be members of the vestry, and the other shall contain the names or name of the persons or person for whom such parishioner may vote as fit and proper to be auditors or auditor of accounts; and each ratepayer shall have one vote and no more for the members of the vestry, and one vote and no more for the auditors or auditor of accounts to be chosen in the said parish or ward.

Duty of inspectors of votes.

18. The person voting shall deposit such folded papers in two separate sets of balloting glasses or boxes (*k*), one set for voting papers

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though he could not act as returning officer; *R.* v. *White*, L. R. 2 Q. B. 557; and see *R.* v. *Ward*, L. R. 7, Q. B. 215.

(*f*) At an election of vestrymen under 1 & 2 Will. 4, c. 60, it was held that the decision of the chairman on a show of hands was not conclusive, but that he was bound on a requisition to ascertain the numbers; *R.* v. *St. Pancras*, 11 A. & Ell. 15. An election of a member of a local board under the Public Health Act, 1848, in the absence of the chairman was held void; *R.* v. *Backhouse*, L. R. 2, Q. B. 16; 36 L. J. Q. B. 7. See as to what matters the decision of the chairman at the election of a member for a local board is conclusive; *R.* v. *Collins*, L. R. 1 Q. B. D. 336. See also *R.* v. *Diplock*, L. R. 4 Q. B. 549, and *R.* v. *Lofthouse*, L. R. 1 Q. B. 433.

(*g*) As to what persons shall be deemed to be rated, see Acts and decisions referred to in *note* section 6, *ante*.

(*h*) The 19 & 20 Vict. c. 112, s. 7, *post*, enacts that this provision shall not be taken to include *church rates*. See now the Act for the abolition of compulsory church rates, 31 & 32 Vict. c. 109.

(*i*) In general a poll is demandable by a voter as of right; see *R.* v. *Hedger*, 12 A. & E. 151; *Campbell* v. *Maund*, 5 A. & E. 865; *R.* v. *D'Oyly*, 12 A. & E. 139; and as to mode of taking poll and right to vote, see *R.* v. *Churchwardens, &c., of Lambeth*, 8 A. & E. 356; *R.* v. *Vestrymen of St. Pancras*, 11 A. & E. 15; *R.* v. *Hedger*, *supra*. Where the demand of a poll by the minority at a meeting of a vestry for the formation of a highway board was refused, the election was held invalid; *R.* v. *How*, 33 L. J., M. C. 53. Refer to case of the void election of a waywarden under 25 & 26 Vict. c. 61, where a poll had been demanded and not taken; *R.* v. *Cooper*, L. R. 5 Q. B, 457. See as to refusal of a poll at a meeting for the adoption of the Local Government Act; *R.* v. *Bird*, 28 J. P. 279.

(*k*) This section is only directory, and where both sets of names were written on one paper, and put into one balloting box, it was held not to in-

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for members of vestry, and another set for the voting papers for auditors or an auditor; and the said balloting glasses or boxes shall be closed at the time hereinbefore fixed for the closing of the poll; and the inspectors (*a*) for the parish or ward (as the case may be) shall forthwith meet together, and proceed to examine the said votes, and if necessary shall continue the examination by adjournments from day to day, not exceeding two days (Sunday excepted), until they have decided upon the persons duly qualified (*b*) according to the provisions of this Act who may have been chosen to fill the aforesaid offices.

Provision for case of equality of votes.

19. In case an equality of votes appear to the aforesaid inspectors to be given for any two or more persons to fill either of the said offices, the inspectors shall decide by lot upon the person to be chosen.

If in the interval between elections the vestry of any parish be reduced below two-thirds, the vacancies to be filled up as herein named.

20. If in the interval between any election under this Act of vestrymen in any parish and the time at which the next election would in the absence of this enactment have taken place the number of such vestrymen be reduced below two-thirds of the full number, so many vestrymen as may be requisite for filling up such number shall be forthwith elected in like manner as in the case of the annual election of such vestrymen, and the provisions of this Act shall be applicable in the case of such election accordingly, save that the notice of election shall be varied from the form prescribed by this Act so far as may be necessary, and where such parish is divided into wards under this Act each ward shall supply the vacancies among the members elected for the same; and every vestryman elected under this enactment shall go out of office at the time when the term of office of the person in whose place he is elected would have expired by effluxion of time.

Penalty for forging or falsifying

21. If any person knowingly personate and falsely assume to vote in the name of any parishioner entitled to vote in any election under this Act (*c*), or forge or in any way falsify any name or writing in

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validate the election; *Ex parte Middleton, in the matter of Kenneth and others*, 25 J. P. 791.

(*a*) See as to appointment of an umpire by the inspectors before commencing their duties, 25 & 26 Vict. c. 102, s. 36, *post*.

(*b*) Persons claiming to be returned must be rated to the full amount required by the 6th section at the time of voting, and it was held to be the duty of the inspectors of votes to inquire into the qualification of candidates, and to return the names of those who have the majority of votes, and are also duly qualified; *Ex parte Ross, in the matter of the Vestry of St. Pancras*, 26 L. J. Q. B. 312; S. C. *nom. R.* v. *Inspectors of Votes, &c., of the Parish of St. Pancras*, 7 Ell. & Bl. 954. But see observations of the court as to the effect of the decision of inspectors with respect to the qualification of candidates for the office of vestrymen in *Goodhew* v. *Williams*, cited in note to section 6, *ante*, and see also *Ex parte Ross*, 25 L. J. Q. B. 313.

(*c*) The personation at an election of guardians under 14 & 15 Vict. c. 105, of a voter who was dead at the time of the election was decided not to be an offence within section 3 of that Act; *Whateley* v. *Chappell*, L. R. 4 Q. B. 147. The *mens rea* was held essential to the offence of fabricating a voting paper under the Local Government Act, 1858. As to who is a "party aggrieved" by the fabrication of a voting paper under the Public Health Act, 1875, see *Verden* v. *Wray*, L. R. 2 Q. B. D. 608. The offence of

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any voting paper or obstructing the election.

any paper purporting to contain the vote or votes of any parishioner voting in any such election, or by any contrivance attempt to obstruct or prevent the purposes of any such election (*d*), the person so offending shall, upon conviction before any two or more justices of the peace having jurisdiction in the parish, be liable to a penalty of not less than £10, and not more than £50, and in default of payment thereof shall be imprisoned for a term not exceeding six nor less than three months.

A list of persons elected vestrymen and auditors by parishioners to be published.

22. The inspectors shall, immediately after they have decided upon whom the aforesaid elections have fallen, deliver to the churchwardens, or to one of them, or other the person presiding at the election, a list of the persons chosen by the parishioners to act as vestrymen and auditors or an auditor of accounts; and the said list, or a copy thereof, shall be published in the parish as herein provided (*e*).

Penalty on inspector for making incorrect return.

23. If any inspector wilfully make or cause to be made an incorrect return of the said votes, every such offender shall, upon information laid by any person before two or more justices of the peace having jurisdiction in the parish, and upon conviction for such offence be liable to a penalty of not less than £25, and not exceeding £50.

Vestries to provide places for holding elections, and pay expenses of taking poll, &c.

24. The vestry of every parish mentioned in either of the schedules (A.) and (B.) to this Act shall provide such places as may be requisite for holding elections of vestrymen and auditors under this Act, and taking the poll thereat; and the expenses of providing such places, of publishing notices, of taking the poll, and of making the return at elections of vestrymen and auditors, shall be paid out of the poor rates of the parish by order of the vestry (*f*): Provided always, that the places requiring to be provided for the first election under this Act of vestrymen and auditors in any parish shall be provided by the churchwardens, and the expenses of providing the same shall be paid out of the poor rates, upon their order.

As to parishes having no churchwardens.

25. The provisions hereinbefore contained shall, so far as concerns any parish in either of the said schedules (A.) and (B.) in which there are no churchwardens, be construed as referring to the overseers of the poor instead of the churchwardens.

How notices and lists to be published.

26. Every notice and list hereinbefore required to be published in any parish or ward of any parish shall be so published by being fixed in some public and conspicuous situation, on the outside of the outer door or outer wall near the door of every church and public chapel in such parish or ward, including places of public worship which do not belong to the Established Church, and if there be no such building as aforesaid, then in some public and conspicuous situation within such parish or ward.

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inducing a person to personate a voter at a municipal election was decided to be committed though the vote was not received, and it was not necessary to show that the election was duly held; *R.* v. *Hague*, 4 B. & S. 715.

(*d*) A rule for a *quo warranto* to vacate the election of a councillor of a borough was refused where there was no proof of systematic riot or intimidation; *R.* v. *Macgill*, 26 J. P. 87; *Buckmaster* v. *Reynolds*, 13 C. B. (N.S.) 62.

(*e*) See section 26.

(*f*) See as to payment of expenses, not otherwise provided for, incurred by vestries in schedule (B.) to this Act, 25 & 26 Vict. c. 102, s. 16, *post*.

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Churchwardens, &c., not complying with Act guilty of misdemeanor.

27. If any churchwarden, overseer, rate collector, or other parish officer refuse or neglect to call any meeting, or give any notice, or do any other act required of him under the provisions of this Act, he shall be deemed guilty of a misdemeanor.

Quorum of vestries.

28. All powers or duties to be performed by the vestry of any parish under this Act may be exercised and performed respectively by the major part of such vestry assembled at any meeting (*a*), there being not less than five vestrymen present at a meeting of a vestry which consists of not more than eighteen elected vestrymen, and not being less than seven vestrymen present at a meeting of a vestry which consists of twenty-four elected vestrymen and no more, and not being less than nine vestrymen present at a meeting of a vestry which consists of thirty-six elected vestrymen or upwards, and at every such meeting all questions shall be decided by the votes of the majority (*b*) of the vestrymen present, and the vestry may act notwithstanding any vacancies therein.

Meetings not to be holden in the church (*c*).

29. In any case in which the vestry-room of any such parish as aforesaid is not sufficiently large and commodious for any vestry meeting, such meeting shall be held elsewhere within the said parish, but not in the church or chapel thereof.

Meeting to elect a chairman.

30. At every meeting of any vestry under this Act, in the absence of the persons authorized by law or custom to take the chair (*d*), the members present shall elect a chairman for the occasion before proceeding to other business, and the chairman, in case of an equality of votes on any question, shall have a second or casting vote.

(*a*) As to requirements in notices of vestry meetings in general, see Prideaux, Duties of Churchwardens, 9th ed., p. 87, *et seq.* The 19 & 20 Vict. c. 112, s. 9, *post*, enables special meetings of vestries to be convened by notice transmitted by the post, and by affixing a notice on or near the door of the building where the meeting is to be holden. See as to day and hour for meetings of vestries, 25 & 26 Vict. c. 102, s. 37, *post*.

(*b*) This means an actual majority of the vestrymen assembled, and where a local Act empowered the vestry, or "the major part of them," to remove a poor rate collector, it was held that it was not sufficient at a meeting of thirty-five vestrymen for sixteen to vote for the removal, and eleven against it, the remaining eight not voting; *R.* v. *Overseers of Christ Church*, 26 L. J. M. C. 69; affirmed in error, 27 L. J. M. C. 23. See also *re Eynsham* 18 L. J. Q. B. 210; S. C. 12 Q. B. 398, *n.*; and *Ex parte Orde re Horsley*, L. R. 6 Ch. 881, with reference to a majority at a meeting held under a petition for liquidation. As to division after show of hands, *Tear* v. *Freebody*, 4 C. B. (N.S.) 228. The Public Health Act, 1875, sch. 1, r. 7, directs that every question at a meeting shall be decided by a majority of the votes of the members present and *voting on that question*, and a similar provision is contained in several subsequent acts relating to the powers and duties of the metropolitan board.

(*c*) See 13 & 14 Vict. c. 57, for preventing the holding of vestry or other meetings in churches, &c.

(*d*) See as to the right of the minister to preside at vestry meetings, *R.* v. *D'Oyly*, 12 A. & Ell. 139; *Wilson* v. *M'Math*, 3 Phill. Ecc. Ca. 67; 3 B. & A. 244, *notes*; and *Mawley* v. *Barbett*, 2 Esp. 687.

Section 31.

Formation of Parishes into Districts, and Constitution of District Boards.

Parishes in schedule (B.) to be united, and form districts, and district boards constituted.

31. For the purposes of this Act the several parishes mentioned in the second column of schedule (B.) to this Act shall be united, and form the respective districts mentioned in conjunction therewith and named in the first column of the same schedule, and there shall be a board of works for each such district, composed of the members elected as hereinafter mentioned for the parishes forming such district.

Vestries to elect members of district boards.

32. The Vestry constituted by this Act in every parish in any such district shall, on the 28th day of November in the year 1855, elect the number of persons mentioned in the third column of the said schedule (B.) in conjunction with such parish to be a member or members of the board of works for such district.

If relative numbers of inhabited houses in parishes in any district vary on any future census the numbers of members may be altered.

33. When at any time hereafter, upon any account taken of the population by the authority of parliament, the relative numbers of the inhabited houses in the several parishes forming any such district are found to have varied from those shown by the last previous census, it shall be lawful for the metropolitan board of works constituted by this Act, upon the application of the vestry or any ratepayers of any such parish, to alter the number of the members of the board of works for such district to be elected for all or any of the parishes therein (*e*); but so that the number of members to be elected for any such parish, if exceeding three, shall be a number divisible by three.

As to the term of office of members of district boards elected at first election, and as to future elections.

34. One third of the members of any such board first elected for any parish for which three or more such members are by this Act appointed to be elected shall go out of office at the time hereinafter appointed (*f*) for the election of members of such board in the year 1857, one other third of them at the time appointed for such election in 1858, and the remaining third at the time appointed for such election in the year 1859; and the vestry shall at the time of the first election under this Act of such members determine by lot which of the members first elected shall constitute the one-third to go out of office in the years 1857 and 1858 respectively; and all members elected to supply vacancies occasioned by members going out of office at the expiration of their term of office shall go out of office at the election of members of such board in the third following year.

Elections to be held annually for supplying vacancies occasioned by expiration of term of office

35. (*g*) The vestry of every such parish shall on the first Wednesday in the month of June in the year 1857, and in every subsequent year, elect so many vestrymen of such parish to be members of the board for the district in which such parish is comprised as may be necessary for supplying the vacancies among the members of such board, elected for such parish, occasioned by expiration of the term

(*e*) See similar provision with respect to vestries, section 5.

(*f*) See section 35.

(*g*) This section is repealed by the 40th section of the 25 & 26 Vict. c. 102, *post*, which renders persons qualified by rating and occupation eligible though not vestrymen.

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of office of the members going out of office at the time of such election.

Provision as to parishes not electing as many as three members of a district board.

36. The members of any such board first elected for parishes for which less than three members are by this Act appointed to be elected shall go out of office on the said first Wednesday in June, 1859, and members subsequently elected for such parishes to supply vacancies occasioned by members going out of office at the expiration of their term of office shall go out of office on the first Wednesday in June in the third year following their election; and the vestries of such parishes shall on the said first Wednesday in June in the year 1859, and in every third following year, elect members in the place of the members then going out of office.

Provision as to casual vacancies.

37. When any member of any district board dies, resigns, or ceases to be such member, otherwise than by the expiration of his term of office (*a*), the vestry of the parish for which he was elected shall with all convenient speed elect a person to be a member of such board in his place; and every member of any such board elected to supply any such vacancy shall go out of office when the term of office of the member in whose place he is elected would have expired by effluxion of time.

Powers of district boards to be exercised at meetings not less than seven members being present.

38. All powers and duties vested in the board of works for any district may be exercised or performed at any meeting of such board holden under this Act, there being not less than seven members of the board present; and at every such meeting all questions shall be decided by the votes of the majority (*b*) of the members present; and the board may act notwithstanding any vacancies therein, and notwithstanding any omission to elect any member or members of such board, in pursuance of this Act.

Ordinary meetings of district boards.

39. The first meeting of the board of works for any district shall be holden on the Wednesday in the week next following the election of such board, at ten o'clock in the forenoon, at the place at which the vestry of the parish in such district first named in schedule (B.) to this Act usually meet; and every subsequent ordinary meeting shall be holden on and at such day, time, and place as the board may from time to time appoint in this behalf (*c*), subject, nevertheless, to the provision hereinafter contained (*d*), appointing the day on which meetings shall be holden for the first election of the metropolitan board of works.

Special meetings of district boards.

40. A special meeting of any such board may be convened by any five members of the board, or by the clerk of the board, upon the requisition in writing of five members of the board, by a notice to the several members thereof forty-eight hours at least before the time of meeting, such notice to be signed by the members or clerk convening the meeting, and to specify the object thereof (*e*).

(*a*) See section 54.

(*b*) See as to what is a majority, note to section 28, *ante*.

(*c*) See provision as to days of meeting of district boards, 25 & 26 Vict. c. 102, s. 37, *post*.

(*d*) See section 45.

(*e*) As to the sufficiency of a notice of the object of a vestry meeting under The General Highway Act for stopping up a highway, see *R.* v. *Powell*, 42 L. J. M. C. 129; L. R. 82 Q. B. 403; also of the special purpose

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41. Every such board shall at every meeting of such board, before proceeding to business, elect a chairman of such meeting, and such chairman, in case of an equality of votes on any question, shall have a second or casting vote.

Chairman to be elected at meeting of board.

Incorporation of Vestries and District Boards.

42. The board to be constituted as aforesaid for every such district shall be a body corporate by the name of "The Board of Works for the —— district," and the vestry of every parish mentioned in schedule (A.) to this Act shall be a body corporate, by the name of "The Vestry of the Parish of ——, in the County of ——," and every such board and vestry shall by such name respectively have perpetual succession and a common seal (*f*), and shall sue and be sued, and have power and authority (without any license in mortmain) to take, purchase, and hold land for the purposes of this Act.

District boards and vestries of parishes in schedule (A.) incorporated.

Constitution and Incorporation of Metropolitan Board of Works (g).

43. A board, to be called "The Metropolitan Board of Works," shall be constituted as hereinafter mentioned, and such board shall by such name be a body corporate, and have perpetual succession and

Metropolitan board of works constituted and incorporated.

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of a vestry meeting under 59 Geo. 3, c. 12; *Blunt* v. *Harwood*, 8 A. & E. 610; see also *R.* v. *Just. Salop*, 29 J. P. 260.

(*f*) For decisions as to the necessity of a seal in contracts for works, and documents and proceedings generally, refer to note to section 149, *post*.

(*g*) The general powers of the Metropolitan Board of Works with respect to sewerage are contained in a series of provisions commencing with the 135th section of this Act together with the 32nd and other sections of the amending Act, 25 & 26 Vict. c. 102. The board were also, by 21 & 22 Vict. c. 104, invested with extended powers for effecting the purification of the Thames and the main drainage of the metropolis. That Act removed the restrictions contained in the 135th & 136th sections of this Act, limiting the period for the completion of the main drainage works, and requiring, before any plan should be carried out, the approval of the commissioners of her majesty's works, and it enacted that the board might execute the necessary works according to such plans as to them might seem proper. It also altered the direction in this section to the effect that works should be executed for preventing the sewage of the metropolis from passing into the Thames *in* or *near* to the metropolis, and authorized the board to carry out works for preventing as far as might be practicable the sewage of the metropolis from passing into the Thames *within* the metropolis. It conferred upon the board additional powers for constructing works under the bed, banks and shores of the Thames, and extended the period for the completion of the works to the 31st December, 1863. It further empowered the board to borrow with the consent of the Treasury, up to the 31st December, 1866, sums not exceeding three million pounds for the purposes of the Act on bonds, debentures, or other securities, on such terms as the commissioners of the Treasury might approve; and it authorized those commissioners to guarantee payment of principal and interest. It required the board to cause to be raised each year during 40 years from the passing of the Act a sum equivalent to a rate of 3*d.* in the pound, to be called the Metropolitan Main Drainage Rate, and enacted that for the purposes of the assessment under the Act, all parts of the metropolis should be deemed to be equally benefited; with a power to the board to make rates on default of the vestries. They were, until the works should be completed, to deodorize the sewage; and the Act required that all works executed under it should be so con-

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structed and kept as not to be a nuisance. By section 27 of 21 & 22 Vict. c. 104, the previous approval of the Admiralty was required of works to be executed upon the bed or shores of the Thames, and by section 28 that of the conservators of the Thames. The powers of the last-mentioned Act were extended by the Metropolitan Main Drainage Extension Act, 1863, which authorized the board to borrow in manner provided any sum not exceeding one million two hundred thousand pounds, in addition to the three million pounds authorized to be borrowed under the former Act. The Commissioners of the Treasury were authorized to guarantee the payment of the principal and interest in manner therein mentioned. The same Act made provisions for the application of the moneys borrowed, and extended the time for the completion of the works until the 31st December, 1866. The 28 Vict. c. 19 enlarged the time for the borrowing by the board of the moneys authorized by the Main Drainage Extension Act, 1863.

This Act was repealed by the Metropolitan Board of Works (Loans) Act, 1869, to the extent defined by the 3rd schedule, subject to the qualifications expressed in section 5. That Act repealed, with the exceptions mentioned, the 4th section of this Act (21 & 22 Vict. c. 104) and the other sections relating to the borrowing of money, and substituted other provisions for this object.

The 33 & 34 Vict. c. 140 (Thames Navigation Act, 1870), required the board, at their own expense, to keep the Thames free from banks or other obstructions to the navigation arising from the flow of sewage at their out-falls into the river, with power to dredge and remove such banks or obstructions subject to the approval of the conservators; and the works were required to be executed under their superintendence, with provisions for the settlement of disputes by arbitration. See reference to Acts for the drainage of certain localities without the limits of the metropolis in note to section 135, *ante*.

The Thames Embankment Act, 1862 (25 & 26 Vict. c. 93) empowered the board to embank the north side of the Thames from Westminster Bridge to Blackfriars Bridge, and to make new streets in and near thereto. The powers of the board in relation to the embankment of the Thames and improvements connected with it were extended and varied by subsequent Acts. See a reference to the whole of these Acts in note to section 9 of 24 & 25 Vict. c. 42, The London Coal and Wine Duties Continuance Act, 1861, *post*, appendix.

Numerous additional duties were imposed upon the metropolitan board by other statutes. The Metropolitan Building Act, 18 & 19 Vict. c. 122 (amended by 23 & 24 Vict. c. 52, 24 & 25 Vict. c. 87, 32 & 33 Vict. c. 82, and 41 & 42 Vict. c. 32) conferred various powers upon them with respect to the limits of districts, the appointment of district surveyors, the modification of rules for the construction of buildings, and other matters. The 41 & 42 Vict. c. 32, the Metropolitan Management and Building (Amendment) Act, 1878, contains provisions relative to houses and buildings in close proximity to certain roads, &c., empowering the board to cause alterations to be made in theatres and music halls, to make regulations with respect to the position and structure of new theatres and music halls, the making and preparation of foundations and sites of houses, &c., with other powers.

The 28 & 29 Vict. c. 90, Metropolitan Fire Brigade Act, 1865, imposes upon the board the obligation of extinguishing fires, and protecting life and property in case of fire within the metropolis, including the city of London.

By the 29 & 30 Vict. c. 122, Metropolitan Commons Act, 1866, the same body are empowered to present a memorial to the inclosure commissioners in relation to any common within the area of the metropolis, who are thereupon to make inquiries and prepare a scheme for its management. For a list of the Metropolitan Commons Supplementary Acts confirming schemes prepared by the inclosure commissioners pursuant to this Act for

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the management of commons, refer to note to section 3 of the Metropolitan Commons Act, 1866, *post*, appendix. By 26 Vict. c. 13, an Act for the protection of certain gardens and ornamental grounds in cities and boroughs, the board are appointed to carry out its provisions in any places within their jurisdiction, except in the city of London, where similar powers are exercised by the corporation. The 37 Vict. c. 10 authorizes the board to acquire and maintain Leicester Square as a place of public recreation; and 40 & 41 Vict. c. 35, Open Spaces (Metropolis) Act, 1877, empowers the board to acquire and hold gardens in squares, &c., for the public benefit.

They are by 23 & 24 Vict. c. 125, Metropolitan Gas Act, 1860, together with the vestries and district boards, the local authority for the purposes of the Act. The Sale of Gas Amendment Act, 1861, transferred (so far as relates to the metropolis) to the metropolitan board the powers conferred upon justices of the peace by 22 & 23 Vict. c. 66, as amended by 23 & 24 Vict. c. 146, as to copies of models of gas meters, the appointment of inspectors, &c., and by special Acts relating to particular companies more particularly referred to in the note to Metropolitan Gas Act, 1860, *post*, appendix, the board are required to perform the duties specified for enforcing compliance with the provisions of the Acts relating to the illuminating power, purity, and pressure of gas and other matters.

They are constituted the local authority for the metropolis (except the city of London and its liberties) for the purposes of 38 Vict. c. 17, the Explosives Act, 1875, and subject to the exception in section 67 as to the harbour authority: and with similar exceptions, as to the city of London and its liberties for the purposes of 34 & 35 Vict. c. 105, the Petroleum Act, 1871. They are the local authority for the metropolis (except the city of London and liberties) for the purposes of the Contagious Diseases (Animals) Act, 1878, and also subject to the provision in section 9 to the effect that the corporation shall alone be the local authority for the metropolis for the purposes of the Act which relate to foreign animals.

They are also the local authority for the metropolis (exclusive of the city of London and liberties) for the purposes of the following Acts:—

The 38 & 39 Vict. c. 36, The Artizans and Labourers Dwelling Improvement Act, 1875.

The 33 & 34 Vict. c. 78, Tramways Act, 1870.

The 37 & 38 Vict. c. 67, Slaughterhouses (Metropolis) Act, 1874.

The 34 & 35 Vict. c. 113, Metropolis Water Act, 1871 (to be construed as one with the Act of 1852).

The 35 & 36 Vict. c. 38, Infant Life Protection Act, 1872.

The 40 & 41 Vict. c. 68, Destructive Insects Act, 1877.

The 28 & 29 Vict. c. 83, Act for regulating the use of locomotives on turnpike and other roads, amended by 41 & 42 Vict. c. 77.

For a reference to the Acts confirming schemes prepared under the Artizans and Labourers Dwellings Improvement Act, 1875, for the improvement of unhealthy areas, see note to section 6 of that Act, *post*, appendix.

By 31 and 32 Vict. c. 80, Metropolitan Subways Act, 1868, the board are authorized to require companies to lay pipes for water, gas, &c., in the subways.

The 41 & 42 Vict. c. 29, Monuments (Metropolis) Act, 1878, invested them with powers for preserving and maintaining the obelisk known as Cleopatra's Needle, and other monuments, and for effecting other objects.

Most of the Acts above referred to are printed in the appendix; see 24 & 25 Vict. c. 42, Coal and Wine Duties Continuance Act, 1861, *post* appendix, and reference in notes to that Act, to 26 & 27 Vict., the Coal & Wine Duties Con. Act, 1863, 31 Vict. c. 17, Coal & Wine Duties Con. Act, 1868, and 32 & 33 Vict. c. 19, Kew and other Bridges Act, 1869, incorporating a joint committee to consist of six members of the corporation of London and six members of metropolitan board for the purpose of accelerating the period for freeing from toll the bridges specified, with power to raise money to be applied to that object, and 37 & 38 Vict. c. 21,

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a common seal (*a*), and sue and be sued, and have power and authority (without any license in mortmain) to take, purchase, and hold land for the purposes of this Act.

Three members of metropolitan board to be elected for the city.

44. The mayor, aldermen, and commons of the city of London, in common council assembled, shall, on the 12th day of December, 1855, elect three persons to be members of the said metropolitan board, and shall, when any member of such board elected by the said mayor, aldermen, and commons dies, resigns, or otherwise ceases to be such member, elect some person in his place (*b*).

Vestries of single parishes and district board to elect members of the metropolitan board.

45. The vestry of each of the parishes mentioned in the first part of the said schedule (A.) shall, at a meeting of such vestry to be holden on the 12th day of December, 1855, elect two persons to be members of the said metropolitan board of works; and the vestry of each of the parishes mentioned in the second part of the said schedule (A.) except the parish of Rotherhithe, and the board of works for each of the districts mentioned in the first part of the said schedule (B.), shall, at a meeting of such vestry and board respectively to be holden on the last-mentioned day, elect one person to be a member of the said metropolitan board; and every such vestry and board shall, when any member of such metropolitan board, elected by such vestry or board, dies, resigns, or otherwise ceases to be such member, elect a person to be a member of the said metropolitan board in the place of the member so dying, resigning, or otherwise ceasing to be such member.

Boards for districts of Plumstead and Lewisham united for electing a member of metropolitan board.

46. The districts of Plumstead and Lewisham, mentioned in the second part of the said schedule (B.), shall be united for the purpose of electing from time to time a member of the metropolitan board of works; and the boards of works for such districts shall, at a joint meeting of such boards, to be held on the said 12th day of December, 1855, at the place of meeting of the board of works for the district of Plumstead, elect a person to be a member of the said metropolitan board; and when any member of such board elected by the boards of works for the said united districts dies, resigns, or otherwise ceases to be such member, such boards of works shall, at a joint meeting of such boards to be holden at the place aforesaid, elect some person in his stead; and such meeting shall be convened as follows; that is to say, the clerk of the board of works for the district of Plumstead shall communicate with the clerk of the board of works for the dis-

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Kew and other Bridges Act, 1869, Amendment Act, 1874, which authorized the raising of an additional sum for the same purpose.

The 31 & 32 Vict. c. 154, Lea Conservancy Act, 1868, for the preservation and improvement of the River Lea, incorporates a board of conservancy to consist of 13 members, one to be appointed by the metropolitan board. By 40 & 41 Vict. c. 17, Metropolitan Bridges Act, 1877, the board are required to extinguish the tolls on the bridges over the Thames, and that over Deptford Creek, and hereafter to maintain such bridges.

For an enumeration of the new streets and thoroughfares, and other improvements carried out by the board under the powers conferred by, and statutes obtained under, the 144th section of this Act and the 75th section of the Metropolis Management Amendment Act, 1862, refer to note to the first-mentioned section, *post*.

(*a*) See note to section 149, *post*.

(*b*) See sections 54, 55.

trict of Lewisham, and arrange with him the time of such meeting of the boards of works for such districts; and when such arrangement has been made, notice of the time, place, and object of such meeting shall be given by such clerks respectively in manner required for notices of special meetings of the boards for such districts; and every election to be made as aforesaid by the said boards shall be determined by the votes of the majority of the members thereof present at the meeting; and every such meeting shall, before proceeding to the election, choose a chairman, who shall preside thereat, and shall, in case of an equality of votes for two or more persons, have a second or casting vote. Section 46.

The parish of Rotherhithe and district of St. Olave united for electing a member of the metropolitan board of works.

47. The parishes of Rotherhithe, Saint John, Horselydown, Saint Olave, and Saint Thomas, Southwark, shall be united for the purpose of electing from time to time a member of the metropolitan board of works; and the vestries of such several parishes shall, at a joint meeting of such vestries to be holden on the said 12th day of December, 1855, at the place of meeting of the vestry of the parish of Saint Olave, elect a person to be a member of the said metropolitan board; and when any member of the said board elected by such vestries dies, resigns, or otherwise ceases to be such member, such vestries shall, at a joint meeting of such vestries to be holden at the place aforesaid, elect some person in his stead; and such meeting shall be convened as follows; that is to say, the vestry clerk of the parish of Saint Olave shall communicate with the vestry clerks of the said other parishes, and arrange with them the time of such meeting; and when such arrangement has been made, notice of the time, place, and object of such meeting shall be given by the respective vestry clerks of all the said parishes in manner required for notices of vestry meetings; and every election to be made as aforesaid by the said vestries jointly shall be determined by the votes of the majority of the members thereof present at the meeting; and every such meeting shall, before proceeding to the election, choose a chairman, who shall preside thereat, and shall, in case of an equality of votes for two or more persons, have a second or casting vote.

As to the term of office of members of metropolitan board elected at first election, and as to future elections.

48. One third of the members first elected as aforesaid of the metropolitan board of works shall go out of office on the second Wednesday in June, 1857, one other third of them on the second Wednesday in June, 1858, and the remaining third on the second Wednesday in June, 1859; and such first elected members shall determine by lot among themselves which of them shall constitute the one third to go out of office in the years 1857 and 1858 respectively; and all members of the said board elected to supply any vacancy occasioned by any member's going out of office by the expiration of his term of office shall go out of office on the second Wednesday in June in the third year next following the year of his election; and every member of the said board elected to supply any other vacancy shall go out of office when the term of office of the member in whose place he is elected would have expired by effluxion of time.

Elected members of metropolitan board to elect a chairman.

49. The members first elected of the metropolitan board of works shall meet at such time and place as one of Her Majesty's principal secretaries of state shall by notice in the London Gazette appoint in this behalf, and shall at such meeting, or some meeting to be holden by adjournment thereof (which it shall be competent for the

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members present to appoint), elect a chairman of the said board, and shall also decide upon the amount of salary to be paid to such chairman, such salary not to be less than £1,500 and not to exceed £2,000 per annum; and such members, before proceeding at any such meeting to such election, or to determine the amount of such salary, shall choose from among the members present a chairman of such meeting, and such election of the future chairman of the board shall be determined by the votes of the majority of the members present, and in case of an equality of votes the chairman of the meeting shall have a second or casting vote; and any person may be elected as aforesaid, whether he be or be not a member of the said board; and such chairman shall be subject to be removed by a resolution agreed to by two-thirds of the members present at any meeting specially convened for considering the question of such removal; and in case any elected member of the said metropolitan board be appointed chairman thereof, he shall thenceforth be a member thereof by virtue only of his office of chairman, and his place as an elected member shall become vacant, and another shall be elected in his stead.

As to appointment of chairman on any vacancy.

50. Upon every vacancy in the office of chairman of the said metropolitan board a new chairman shall be appointed, and his salary fixed, in manner hereinbefore mentioned, save that the appointment of such chairman may be made at any such meeting as may be provided in this behalf by the regulations for the time being of the said metropolitan board.

Powers of metropolitan board to be exercised at meetings, not less than nine members being present.

51. All powers and duties vested in the metropolitan board of works may be exercised and performed at any meeting (*a*) of such board at which not less than nine members of the board are present; and at every such meeting all questions shall be determined by the votes of the majority (*b*) of the members present; and such board may act notwithstanding any vacancies therein, and notwithstanding any omission to elect any member or members of such board in pursuance of this Act, but such board shall not be deemed to be constituted until the first election of a chairman of such board under this Act.

Meetings of the metropolitan board.

52. The first meeting of the said metropolitan board shall be holden at such time and place as the chairman may appoint, of which notice in writing, signed by such chairman, shall be given to each elected member of the said board, two clear days at the least (*c*) before the time of such meeting; and the said board may meet at such times and places as they may from time to time appoint; and a special meeting of the said board may be convened by the chairman of the said board, or by the clerk thereof, upon the requisition in writing of the chairman or any five members of the board, by a notice to the several members thereof, two clear days at the least

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(*a*) By section 202 the metropolitan board, and vestries, and district boards are empowered to make bye-laws for, amongst other purposes, regulating the business and proceedings at their meetings and those of committees; and by section 23 of 25 & 26 Vict. c. 102, *post*, resolutions of the metropolitan board, authorizing an expenditure amounting to or exceeding £20,000, are not to be valid unless confirmed at a subsequent meeting.

(*b*) As to what constitutes a majority, see note to section 28, *ante*.

(*c*) This means two clear days exclusive of the day on which the notice is given, and of the day on which the meeting is to be held. See *Norton* v. *Town Clerk of Salisbury*, 4 C. B. 32.

before the time of meeting, such notice to be signed by the chairman or clerk convening the meeting, and to specify the object (*d*) thereof. Section 52.

53. The chairman of the metropolitan board of works for the time being elected under this Act shall preside at every meeting of such board at which he is present; and in case of a vacancy in the office of such chairman, or in his absence, some other member of such board shall be chosen to preside thereat; and in case there be an equal number of votes upon any question, the chairman presiding at the meeting shall have a second or casting vote. Chairman to preside at meetings. In case of vacancy, &c., a temporary chairman to be chosen.

Proceedings concerning Constitution, Procedure, and Officers of Metropolitan and District Boards and Vestries.

54. In case any member of the metropolitan board of works, or of any district board of works, or of any vestry for any parish mentioned in schedule (A.) or (B.) to this Act, or any auditor of the accounts of any such board or vestry, be declared bankrupt, or apply to take the benefit of or become subject to any Act for the relief of insolvent debtors, or compound with his creditors (*e*), or accept or hold any office (*f*) under the board or vestry of which he is a member, or of whose accounts he is auditor, other than, in the case of any such auditor, his office of auditor, or in any manner be con- Disqualifications of members of metropolitan board of district boards, of vestries of parishes in

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(*d*) As to sufficiency of statement of special purposes for which meeting of vestry held, see *Blunt* v. *Harwood*, 8 A. & E. 610; *Smith* v. *Deighton*, 8 Moore, P. C. 179.

(*e*) The introductory words in the 19th section of the Public Health Act, 11 & 12 Vict. c. 63, "No bankrupt, insolvent, or other person, not qualified as aforesaid, shall be capable of being elected," &c., do not occur in this section, and the enactment merely enumerates the events in which a member after election shall cease to be a member. The Public Health Act, 1875, sch. 2, r. 5, disqualifies for election, on a local board, a person who is a bankrupt, or whose affairs are under liquidation by arrangement, or who has entered into any composition, &c., so long as any proceedings in relation to such bankruptcy, &c., are pending, and r. 64 of the same schedule describes the events working the disqualification of elected members of boards. It was held under 5 & 6 Will. 4, c. 76, that a bankrupt who had not obtained his certificate was not disqualified from being *elected* as a town councillor; *R.* v. *Chitty*, 5 A. & E. 609. Where under the Municipal Corporation Act a town councillor compounded with his creditors and resigned, and the council without declaring the office void elected him again, the election was held invalid; *Hardwick* v. *Brown*, L. R. 8 C. P. 406. The term "insolvency" operating as a disqualification under a bye-law of a corporation was held to mean public or notorious insolvency as by stopping in business, calling creditors together, or entering into a deed of composition; *R.* v. *Saddlers' Co.*, 28 J. P. 36.

(*f*) This clause does not use the expression "of profit," occurring in the 28th section of 5 & 6 Will. 4, c. 76, and in the 9th section of the Commissioners' Clauses Act, 1847. As to the term "holding an office" within the meaning of articles of association of a Joint Stock Company, see *Iron Ship, &c., Company* v. *Blunt*, L. R. 3 C. P. 484, and as to the liability of a trustee of a turnpike road accepting the office of treasurer; *Delane* v. *Hillcoat*, 9 B. & C. 310. The appointment by directors of a joint stock company, registered under the Act of 1856, of one of their own number as a salaried officer was held valid under the Act and at common law; *Eales* v. *Cumberland Blacklead Co.*, 30 L. J. Ex. 141.

Section 54. schedule (A.) and (B.), and of auditors.

cerned or interested in any contract or work (*a*) made with or executed for such board or vestry, in every such case such person shall cease to be such member or auditor as aforesaid: Provided always, that no person being a shareholder of any joint stock company shall be disabled from continuing or acting as a member of any such board or vestry by reason of any contract between such company and such board or vestry, or of any work executed by such company; but no such member shall vote upon any question in which such company is interested; and any person who acts as a member of any such board or vestry, or as auditor of the accounts thereof, after ceasing to be such member or auditor as aforesaid, or who, being a shareholder in any joint stock company, votes upon any question in which such company is interested, and any person who acts as a member of any such vestry as aforesaid without being qualified by rating and occupation as required by this Act, shall for every such offence be liable to a penalty of £50 (*b*), which may be recovered by any person who may sue for the same in any of the superior courts of law, with full costs of suit: Provided also, that all acts and proceedings of any person ceasing to be such member or auditor, or disabled from acting as aforesaid, shall, if done previously to the recovery of such penalty, be valid and effectual to all intents and purposes whatsoever.

Members of metropolitan and district

55. Any member of the metropolitan board of works, or of any vestry elected for any parish mentioned in schedule (A.) or (B.) to this Act, or of the board of works for any district, may at any time

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(*a*) Where, in an action for penalties against a town commissioner, under a local Act, incorporating the Commissioners' Clauses Act, 1847, 10 & 11 Vict. c. 16, a bill addressed by the defendant to the commissioners for lime which he had supplied was produced, it was held to be evidence for the jury that the defendant was concerned in a contract within the 10 & 11 Vict. c. 19, s. 6; *Nicholson* v. *Fields*, 31 L. J. Ex. 233. This case was distinguished from *Woolley* v. *Kay* (*infra*), where it was apparently the opinion of the court that a mere casual dealing would not be a contract for furnishing, supplying, or selling; per *Pollock*, C. B. *ibid.* See *Woolley* v. *Kay*; 25 L. J. Ex. 351; 1 H. & N. 307. In *Le Feuvre* v. *Lankester*, 23 L. J. Q. B. 254; 3 Ell. & Bl. 230, it was decided that an alderman of a borough who had openly and *bonâ fide* supplied some iron railings to a person contracting with the local board, was not liable to the penalty imposed by 5 & 6 Will. 4, c. 76, s. 28. Under section 28 of the Municipal Corporation Act the disqualification of an alderman who has an interest in a contract with the council, only applies during the continuance of the contract, and he incurs no penalty by acts done after its termination; *Lewis* v. *Carr*, L. R. 1 Ex. D. 484. A surveyor receiving a commission from the manufacturer of bricks sold for works under the Public Health Act, 1848, but not under a contract with the board, was held competent to make an apportionment of the expenses; *Wednesbury Local Board of Health* v. *Stevenson*, 27 J. P. 741. See also *Foster* v. *Oxford &c., Railway Co.*, *Webb* v. *Commissioners of Herne Bay*, L. R. 5 Q. B. 642, and *Imperial Mercantile Credit Association* v. *Coleman*, L. R. 6 Ch. 558; H. of Lords 189. For decisions on provisions in statutes relative to workhouses, &c., see *Greenhow* v. *Parker*, 31 L. J. Ex. 4; *West* v. *Andrews*, 5 B. & Ald. 328; *Proctor* v. *Mainwaring*, 3 B. & A. 145; *Towsey* v. *White* 5 B. & C. 125; *Henderson* v. *Sherborne*, 2 M. & W. 236; *Barber* v. *Waite*, 1 A. & E. 514.

(*b*) See the case of *Goodhew* v. *Williams*, cited in note to section 6, *ante*, where it was held that the liability to this penalty was not taken away by the provision in the 4th section of the Amending Act 19 & 20 Vict. c. 112.

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resign his office, such resignation of any member of the metropolitan board of works to be notified in writing signed by such member to the chairman of such board, and such resignation of any vestryman or member of any such district board to be notified in writing signed by such vestryman or member to the churchwardens of the parish for which he was elected.

boards, and of vestries of parishes in schedule (A.) or (B.), may resign.

56. Any member of the metropolitan board of works, or of any district board of works, or of any such vestry, going out of office, shall, if qualified, be capable of immediate re-election.

Retiring members of boards and vestries may be re-elected.

57. No resolution or other act of the metropolitan board of works, or of the board of works for any district, or of any such vestry, shall be revoked or altered at any subsequent meeting, unless such subsequent meeting be specially convened for the purpose (*c*), nor unless such revocation or alteration be determined upon by a majority consisting of two-thirds of the members of the board, or of the vestrymen present at such subsequent meeting, if the number of members or vestrymen present at such subsequent meeting be not greater by one-fifth than the number present when such resolution was made or such act was done, but if the number of members or vestrymen present at such subsequent meeting be greater by one-fifth than the number present at such former meeting, then such revocation or alteration may be determined upon by a mere majority.

No resolution of metropolitan or any district board, or of any vestry, to be revoked at a subsequent meeting, unless under certain circumstances.

58. It shall be lawful for the metropolitan board of works, and the board of works for any district, and any such vestry respectively, to appoint a committee or committees for any purposes which, in the discretion of the board or vestry, would be better regulated and managed by means of such committee, and at any meeting to continue, alter, or discontinue such committee : Provided always, that

Committees may be appointed.

(*c*) As to mode of convening a special meeting in the case of the metropolitan board, see section 52, *ante;* of vestries, see the Amending Act of 1856, the 19 & 20 Vict. c. 112, s. 9, *post;* and of district boards, section 40, *ante*. Where at one meeting it was resolved that the name of a street should be altered, and at a subsequent meeting the name was again altered, the latter meeting not having been specially convened in conformity with this enactment, the second resolution was held invalid; *Sooby* v. *Vestry of Kensington*, 35 J. P. 343, and by the court, "the object of the section was to prevent the revocation or alteration of a former order without adequate public notice." Where a metropolitan vestry resolved to pave a street out of the general rate under section 106, and by a subsequent resolution determined to proceed under section 105, imposing the cost of the work on the owners of property, it was decided to be unnecessary to rescind the first resolution; *Vestry of St. George the Martyr* v. *Pethebridge*, 31 J. P. 279. Where a bye-law under the Public Health Act, 1848, provided that no resolution should be altered or rescinded without a month's notice to each member of the board setting forth the proposed alteration, and the local board having passed a resolution for the making of three separate rates, by a subsequent resolution decided on making one general rate without the notice directed by the bye-law, the general rate was held invalid; *Meyer* v. *Burslem*, 39 J. P. 437. *Semble*, that a resolution of a local board of health dismissing an officer was not a resolution rescinding the resolution by which he was appointed within the meaning of a bye-law relative to the rescission of resolutions; *Ex parte Richards*, L. R. 3 Q. B. D. 368. See *R.* v. *Jones*, 42 J. P. 614, and *R.* v. *Mayor of Ryde*, 8 Cox. Mag. Ca. 185.

Section 58. the acts of every such committee shall be submitted to the general body of the board or vestry appointing such committee for their approval (*a*).

Powers of committees.

59. Every committee so appointed may meet from time to time, and may adjourn from place to place, as they may think proper, for carrying into effect the purposes of their appointment; but no business shall be transacted at any meeting of the committee unless three members of the committee are present.

Minutes of proceedings of metropolitan and district boards and of vestries to be entered.

60. Entries of all proceedings of the metropolitan board of works, and every such district board, and of any such vestry, with the names of the members who attend each meeting, shall be made in books to be provided and kept for that purpose (*b*) under the direction of the board or vestry, and shall be signed by the members present, or any two of them; and all entries purporting to be so signed shall be received as evidence, without proof of any meeting of the board or vestry having been duly convened or held, or of the presence at any such meeting of the persons named in any such entry as being present thereat, or of such persons being members of the board or vestry, or of the signature of any person by whom any such entry purports to be signed, all which matters shall be presumed until the contrary be proved; and every such board and vestry shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid by them or under their authority, and of all liabilities incurred by them, and of the several purposes for which such sums of money are received and paid and such liabilities incurred, and copies of all contracts entered into by any such board or vestry.

All books to be open to inspection

61. All such books shall at all reasonable times be open to the examination of every member of the board and vestry respectively to which such books belong, and of every owner of property, churchwarden, overseer, and ratepayer within the metropolis, as regards books of the said metropolitan board, and of every owner of property, churchwarden, overseer, and ratepayer within any district or parish, as regards books belonging to the district board or vestry (as the case may be), and of every creditor on the rates raised under this Act by any such board or vestry respectively, without fee or reward, and they respectively may take copies of or extracts from such books or any part thereof, without paying for the same; and in case the members of the board or vestry, or any of them, or any of the officers or servants of the board or vestry having the custody of the said books, being thereunto reasonably requested, refuse to

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(*a*) That part of this section which provides that the acts of every committee shall be submitted to the general body for approval is repealed so far as concerns the metropolitan board, and other provisions are substituted; 25 & 26 Vict. c. 102, s. 31, *post*. Where a committee appointed under an authority given by the Land Drainage Act, 1861, delegated its duties to a committee of three members, it was decided that every act must be the joint act of the three, and it was not competent for them to apportion their duties among themselves; *Cook* v. *Ward*, L. R. 2 C. P. D. 255 (C. A.)

(*b*) In a suit to restrain a local board of health from discharging sewage into a stream, the minute book of the board was, under the circumstances of the case, ordered to be deposited in the Record and Writ Clerks' Office in London; *Att.-Gen.* v. *Whitwood Local Board*, 40 L. J. Ch. 592. See further, *R.* v. *Mayor of York*, 1 E. & B. 588.

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permit or do not permit any such owner of property, churchwarden, overseer, ratepayer, or creditor to examine the same, or take any copies or extracts, every such member, officer, or servant so offending shall for every such offence, upon a summary conviction thereof before two justices, forfeit any sum not exceeding £10.

Power to metropolitan board, district boards, and vestries to appoint officers (*e*).

62. The metropolitan board of works, and (subject to the provisions herein contained) the board of works for every district under this Act, and the vestry of every parish mentioned in schedule (A.) to this Act, shall respectively appoint or employ, or continue for the purposes of this Act, and may remove at pleasure, such clerks, treasurers, and surveyors, and such other officers and servants as may be necessary, and may allow to such clerks, treasurers, surveyors officers, and servants respectively, such salaries and wages as the board or vestry may think fit.

Clerk and treasurer not to be the same person.

63. No person holding the office of treasurer under the metropolitan board, or any district board, or any such vestry, nor his partner, nor any person in the service or employ of them or either of them, shall hold, be eligible to, or in any manner assist or officiate in the office of clerk (*d*); and neither the person holding the office of clerk, nor his partner, nor any person in the service or employ of them or either of them, shall hold, be eligible to, or in any manner assist or officiate in the office of treasurer; and every person offending in any of the cases specified in this provision shall forfeit and pay the sum of £100, which may be recovered by any person, with full costs of suit, by action in any of the superior courts of law.

Penalty on officers, &c., being interested in contracts, or exacting fees.

64. No officer or servant of the metropolitan board, or of any district board or any such vestry, shall be in anywise concerned or interested in any contract or work made with or executed for such board or vestry (*e*); and if any such officer or servant be so concerned or interested, or, under colour of his office or employment, exact, take, or accept any fee or reward whatsoever other than his proper salary, wages, and allowances (*f*) he shall be incapable of

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(*c*) See continued employment not under seal by a new corporation, of an attorney retained under seal by the old corporation; *Mallam* v. *Guardians of Poor of Oxford*, 2 E. & E. 192. And as to the authority of commissioners under a local Act to employ an attorney, *Hall* v. *Taylor*, Ell. Bl. & Ell. 107.

(*d*) See as to the employment of the clerk of a clerk as assistant treasurer; *Hawkings* v. *Newman*, 4 M. & W. 613. And as to proceedings for penalties under the Municipal Corporation Acts, 1835 and 1861, against borough justices for appointing as their clerk a person who was clerk of the peace for the county, refer to *Brown* v. *Downs*, 10 Cox Mag. Ca. 444.

(*e*) See note to section 54, *ante*, as to what is a contract within that section. The supply of bricks for use of a local board of health, of which their surveyor was the patentee, was decided not to be an illegal contract within the Public Health Act, 1848; *Wednesbury* v. *Stevenson*, 27 J. P. 741.

(*f*) Gratuities to officers paid out of rates were held unlawful, *Ex parte Mellish*, 8 L. T. (N.S.) 47. It was decided that the poor law board might, in awarding compensation to the clerk of a dissolved union, a solicitor, take into consideration advantages collateral to his employment as clerk such as payments for professional charges in legal proceedings; *R.* v. *Poor Law Board*, 41 L. J. M. C. 16.

The words "exaction, &c., under colour of his office," do not apply to extra services, such as extra remuneration to a surveyor of a local board

Section 64. afterwards holding or continuing in any office or employment under such board or vestry, and shall forfeit and pay the sum of £50, which may be recovered by any person, with full costs of suit, by action in any of the superior courts of law; provided that no person being a shareholder of any joint stock company shall be prevented from being employed as an officer or servant by reason of any contract between such company and such board or vestry, or of any work executed by such company.

Officers, &c., intrusted with money to give security for

65. Before any officer or servant as aforesaid enters upon any office or employment under this Act, by reason whereof he will or may be intrusted with the custody or control of money, the board or vestry shall require and take from him such security (*a*) for the faithful

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for work not falling within his ordinary duties; *R.* v. *Gloucester*, 33 L. T. (N.S.) 145.

(*a*) See as to what constitutes the forfeiture of a bond for the due payment of monies received by a railway clerk, *London Brighton and South Coast Railway Company* v. *Goodwin*, 3 Ex. 736. Where the duties of an office are essentially changed and the risk of the surety increased, the surety will be discharged; *Pybus* v. *Gibbs*, 26 L. J. Q. B. 41. The liability of a surety for an assistant collector of poor rates was held to be discharged by the subsequent appointment of the latter to another office by reason that the offices were incompatible; *Malling Union* v. *Graham*, L. R. 5 C. P. 201; and by the continued employment, without the knowledge of the surety, of a person who had committed embezzlement, see *Phillips* v. *Foxall*, L. R. 7 Q. B. 666; see also *Halifax Union* v. *Wheelwright*, 44 L. J. Ex. 121; and *Sanderson* v. *Aston*, L. R. 8 Ex. 73; so also the surety of a contractor for works where another surveyor was associated with the surveyor of the local board without the knowledge of the surety; *Stiff* v. *Local Board of Eastbourne*, 19 L. T. (N.S.) 408; and by the execution of a deed by a principal, conveying his estate and effects to the obligee in trust, unknown to the surety; *Graqoe* v. *Jones*, 42 L. J. Ex. 68. And see discharge of surety where time given to the principal without his knowledge; *Croydon Gas Company* v. *Dickens*, L. R. 1 C. P. D. 707. Where, on the proposal for a policy by a collector of the commissioners of taxes, inaccurate answers to questions were given respecting the checking of the collector's accounts and the amount to be held in hand at any one time, the lords justices, reversing the decision of one of the vice-chancellors, decided that the policy was void from the beginning, as founded on misrepresentation; *Towle* v. *Nat. Guar. Assurance Society*, 30 L. J. Ch. 900; and see *Anderson* v. *Fitzgerald*, 4 H. L. Ca. 484.

But the surety of a poor rate collector was held not to be discharged where the collector was transferred to another district, the transfer not amounting to an appointment to a fresh office, or to an essential alteration of his duties; *Guardians of the Portsea Island Union* v. *Whillier*, 2 Ell. & Ell. 755; nor where changes were effected by certain Acts of Parliament in the duties of a collector of sewers rates which did not amount to an alteration of the office; *Skillett* v. *Fletcher*, L. R. 1 C. P. 217.

And see as to suretyship for the performance of separate and distinct things, *Croydon Commercial Gas Company* v. *Dickens*, *supra*.

See as to the liabilities of sureties for collectors and other officers on a change of duties and in other events; *Bartlett* v. *the Attorney-General*, Parker, 277; *Oswald* v. *Mayor of Berwick-on-Tweed*, 5 H. L. Ca. 856; 25 L. J. Q. B. 383; *Mayor of Clifton Dartmouth Hardness* v. *Silly*, 26 L. J. Q. B. 90; *Frank* v. *Edwards*, 8 Ex. 214; and see *Evans* v. *Bremridge*, 25 L. J. Ch. 102. A guarantee to continue in force until six months notice of discontinuance, is determined by notice of the death of the guarantor; *Harris* v. *Fawcett*, 37 J. P. 437; *Bradbury* v.

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duly accounting for the same.

execution of such office or employment, and for duly accounting for all monies which may be intrusted to him by reason thereof, as they may think sufficient; and every such officer and servant, as well during his continuance in office or employment as upon his resignation, dismissal, or ceasing to hold his office or employment, shall respectively, when and in such manner as shall be required by the board or vestry, make out and deliver a true and perfect account, in writing signed by him, of all moneys received by him for the purposes of this Act, and stating how, and to whom, and for what purpose such moneys have been disposed of, and shall together with such account deliver the vouchers or receipts for all payments made by him, and pay over to the treasurer or such person as the board or vestry may appoint all moneys owing by him; and if any such officer or servant fail to render such account, or to produce and deliver up such of the said vouchers and receipts as may be in his possession or power, or to pay over any such moneys as aforesaid, or if, for the space of five days after being thereunto required, he fail to deliver up to the board or vestry, or to such person as they may appoint, all books, papers, writings, property, effects, matters, and things in his possession or power belonging to the board or vestry, then and in every such case a justice shall, on complaint being made to him in that behalf, summon the party charged to appear and answer the complaint before two justices, at a time and place to be specified in the summons (*b*); and upon the appearance of the party charged, or upon proof that the summons was personally served upon him or left at his last known place of abode in England, and if it appear to the last mentioned justices that he has failed to render any such account, or to produce and deliver up any such vouchers or receipts, or any such books, papers, writings, property, effects, matters or things as aforesaid, and that he still fails or refuses so to do, it shall be lawful for them, by warrant under their hands and seal, to commit the offender to gaol (*c*), there to remain, without bail, until he shall have rendered such account, and produced and delivered up all such vouchers, receipts, books, papers, writings, property, effects, matters, and things in respect of which the charge was made; and if it appears that the party charged has failed to pay over any such moneys as aforesaid, and that he still fails or refuses so to do, it shall be lawful for the last-mentioned justices, by a like warrant, to cause the same to be levied by distress and sale of his goods and chattels, and in default of any sufficient distress to commit him to

If officer fail to render account, &c., justice may commit offender to prison.

Power to levy by distress.

Morgan, 1 H. & C. 249 distinguished; and as to liability of a surety where the principal debtor is discharged by a resolution under section 125 of the Bankruptcy Act, 1869, in the same manner as in an ordinary bankruptcy, refer to *Ellis* v. *Wilmot*, L. R. 10 Ex. 10.

(*b*) But an action for a breach of duty in failing to account may be brought against the defaulter; *Mayor, &c., of Lichfield* v. *Simpson*, 8 Q. B. 65, where it was decided that the corporation were not restricted to the summary proceedings before justices given by 5 & 6 Will. 4. c. 76.

(*c*) In a case under 17 Geo. 2, c. 38, it was decided to be discretionary with the justices whether they would commit to prison an overseer failing to account; *R.* v. *Justices of Norfolk*, 4 B. & Ad. 238. Under a similar section in the Public Health Act, 1875, the imprisonment for a failure to deliver up books is limited to six months. If a collector under a local board refuses to deliver up books, &c., and after notice continues to refuse, the offence is a continuing one, and is not within the limitation of time prescribed by 11 & 12 Vict. c. 43 (Jervis' Act). See *Mayer* v. *Harding*, 17 L. T. (N.S.) 140; and *Reg.* v. *Martin*, L. R. 4 Q. B. 285.

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gaol, there to remain, without bail, for a period not exceeding three months, unless such moneys be sooner paid: Provided always, that if the complainant, by deposition on oath, show to the satisfaction of any justice that there is probable cause for believing that the party charged intends to abscond, it shall be lawful for such justice, without previous summons, by warrant under his hand and seal, to cause him to be forthwith apprehended; and in such case the said party shall, within twenty-four hours after apprehension, be brought before the same or some other justice, who may order that he be discharged from custody, if such justice think that there is no sufficient ground for detention, or that he be further detained until he be brought before two justices at a time and place to be named in the order, unless bail to the satisfaction of the justice be given for the appearance of the party before such two justices: Provided also, that no such proceeding shall be construed to relieve or discharge any surety of the offender from any liability whatsoever.

Metropolitan and district boards and vestries to provide proper offices, and cause daily attendance to be given

66. The metropolitan board of works and every such district board and vestry respectively shall provide and maintain such offices within their respective district or parish as may be necessary for the purposes of this Act, and shall take care that their clerk, or some person duly authorised by them in that behalf, attends at their office daily (Sundays, Christmas Day, and Good Friday, and days appointed for any general fast or thanksgiving, alone excepted), for the purpose of receiving notices and transacting the ordinary business of the board or vestry under this Act.

Duties and Powers of Vestries and District Boards (a).

"Vestry" in following provisions to

67. Where in the provisions hereinafter contained any expression is used referring to the vestry of a parish, such expression shall be

(a) Other enactments have considerably extended the powers and duties of metropolitan vestries and district boards. Among the more important of these must be mentioned the Metropolis Gas Act, 1860, 23 & 24 Vict. c. 125, conferring various powers on those bodies in relation to the supply of gas, and by the 4th section of which Act they are with the metropolitan board included under the expression "local authority," which definition is substantially repeated in subsequent special Acts relating to particular gas companies which, however, as to those Acts, repeal various provisions of the Act of 1860, and materially vary others. By 25 & 26 Vict. c. 102, s. 73, the power of improving and regulating streets, and for the suppression of nuisances contained in 57 Geo. 3, c. 29, are extended to the metropolis. The 26 Vict. c. 13, Gardens in Towns Protection Act, 1863, contains provisions for placing, in certain events defined by the Act, gardens and ornamental grounds under the charge of vestries and district boards. By section 134 of this Act, they are the authorities for executing the Nuisances Removal Acts, and so also under the Sanitary Act, 1866, which enlarges the definition of the expression "nuisance" and contains various new provisions for enforcing sanitary measures. It also empowers them, on complying with the directions of the 35th section, to make regulations relative to houses let out in lodgings, or occupied by members of more than one family. By the 47th section of the Metropolis Management Amendment Act, 1862, all persons, other than vestries or district boards, intending to branch sewers into the sewers of the last-mentioned bodies must apply for the previous sanction of the vestry or district board, who, by section 48, before sanctioning the construction of such sewers, are required to submit the plans and sections thereof to the metropolitan board for approval; and by section 62 of the same Act, in conjunction with section 103 of this Act (1855), district surveyors under the Metropolitan Building Act, 1855, are required to report to the

construed as referring only to the vestry of a parish mentioned in schedule (A.) to this Act, unless such construction be repugnant to the context.

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mean vestry of a parish in schedule (A.)

68. Upon the commencement of this Act all sewers vested in the

Sewers (except main sewers) vested in vestries and district boards (*b*).

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metropolitan and district boards and vestries as to underground rooms occupied as dwellings. They are the local authorities for their parishes and districts for the purposes of 31 & 32 Vict. c. 130, the Artizans and Labourers Dwelling's Act, 1868; and by 38 & 39 Vict. c. 36, the Artizans and Labourers Dwelling's Improvement Act, 1875, their medical officers of health are authorized to make official representations to the local authority with a view to improvement schemes under that Act. They are the "road authority" for the purposes of 33 & 34 Vict. c. 78, the Tramways Act, 1870. They are included among the bodies, &c., on whom notices must be served before any license for the use of any place as a slaughter-house or cow-shed is granted by justices at special sessions under the 93rd section of the Metropolis Management Amendment Act, 1862, to the intent that they may, if they see fit, show cause against the grant of the license. By 38 & 39 Vict. c. 63, the Sale of Food and Drugs Act, 1875, they are within the metropolis (exclusive of the City of London and liberties thereof) authorized to appoint analysts of all articles of food and drugs sold within their districts, &c., with a power to their medical officer of health or sanitary inspector (amongst others) to proceed for penalties in case of offences against the Act. They are the "sanitary authority" for their parishes and districts for the purposes of the 39 & 40 Vict. c. 75, the Rivers Pollution Prevention Act, 1876, which defines such authority in the metropolis as any local authority acting in the execution of the Nuisances Removal for England Act, 1855, and the Acts amending the same. They were the local authority under the 26 & 27 Vict. c. 40, the Bakehouses Regulation Act, 1863, but that Act was repealed by the 41 & 42 Vict. c. 16, Factory and Workshops Act, 1878, which by section 96 defines the term "sanitary authority" to mean any commission, board, or vestry in the metropolis having the like powers as urban or rural sanitary authorities within the meaning of the Public Health Act, 1875, and contains enactments relating to the objects provided for by the repealed Act. They are also authorized to adopt proceedings within their parishes and district for the protection of highways, sewers and drains, and other property under provisions contained in special Acts, conferring upon companies and other bodies powers for the construction of railway bridges, the formation of new streets, roads, and various other objects.

(*b*) The effect of this section, in conjunction with section 135, is to vest in the metropolitan board the main sewers enumerated in schedule (D.) to the Act, including the main sewers of the city of London, and all other sewers within the parishes mentioned in schedules (A.) and (B.) in the vestries and district boards. All sewers within the city of London other than the main sewers specified in schedule (D.) remain vested in the commissioners of sewers of the city, who retain all powers relative to sewerage under the City of London Sewers Act, 1848, (11 & 12 Vict. c. 163) which are not transferred to the metropolitan board by virtue of this Act. The sewers existing at Woolwich at the time of the passing of this Act were vested in the local board of health, constituted under the Public Health Act, who, by section 238 of this Act, are made subject to the orders of the metropolitan board in relation to sewerage and other matters in the same manner as vestries. None of the main sewers mentioned in schedule (D.) are in that parish, and any future sewers which may be made, either by the metropolitan or local board of health, will be vested in the respective bodies, subject to the power of adoption by the former under the provisions of this Act. Those sewers, belonging to the metropolitan commissioners, which are situate in districts without the limits of the metropolis as at present defined, are excepted from the property transferred by section 148. The

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word "sewer" applies to the subject matters specified in the 350th section of this Act, as extended by the 112th section of 25 & 26 Vict. c. 102. See observations of *Kindersley*, V.C., in *Sutton* v. *Mayor, &c., of Norwich*, 27 L. J. Ch. 739, as to the meaning of the word "sewer." It originally meant a sea-wall, weir, dam, or defence against tides and inundations, or, according to others, a trench supported by banks for carrying fresh waters into the sea. According to the case of the *Poplar District Board* v. *Knight*, 28 L. J. M. C. 37, the word *sewer*, as used in the 204th and other sections of this Act, includes the wall and bank of the river Thames, preserving the low lands contiguous from inundation. It has, however, long since been extended beyond its original signification, and applied to channels both open and covered for the conveyance of feculent drainage. The situation of the sewers dealt with by the present Act, and existing at the time of its passing, is for the most part well known, the greater part of them being laid down upon the sheets of the subterranean survey in the possession of the Metropolitan Board of Works, and by this section all sewers to be hereafter made in parishes or districts described in schedules (A.) and (B.), except such as vest in the Metropolitan Board of Works, will vest in vestries or district boards. Before the passing of the Sewers' Act, 3 & 4 Will. 4, c. 22, commissioners of sewers, in general, had not such a possession of their works as enabled them to maintain an action of trespass against parties injuring them; *Duke of Newcastle and others* v. *Clarke*, 8 Taunt. 602; and see *Stracey* v. *Nelson*, 12 M. & W. 535. The terms of the present enactment vesting the sewers, &c., in boards and vestries are very similar to those used in section 96, vesting highways in vestries, &c., under which it seems to have been assumed that the soil of highways had become vested in the district boards and vestries; *Wandsworth Board of Works* v. *London and South Western Railway Company*, 8 Jur. (N.S.) 691, Ch. In the case of *Taylor* v. *Corporation of Oldham*, 46 L. J. Ch. D. 105, it is said by the Master of the Rolls that the usual clause in local Acts, vesting sewers in the sewer authority, confers an absolute property in that part of the subsoil occupied by any sewer, and not merely an easement or right of sewerage. In *Bagshaw* v. *Buxton*, L. R. 1 Ch. Div. 220, the same judge in commenting upon the word "vested" in the Towns Improvement Clauses Act, 1867, with reference to a highway, says: "I mean 'vested *sub modo*' as far as a highway can be, not giving the board necessarily a right to the soil." But in *Coverdale* v. *Charlton*, L. R. 3 Q. B. D. 372 (affirmed by C. A. 43 J. P. 268), it was held that the "vesting" intended by the 149th section of the Public Health Act, 1875, was not merely of the use and control of a lane for highway purposes, but an actual vesting of the property in the soil. See reference to that decision and as to the nature and extent of the "vesting" intended, in note to section 96, *post*. The making, &c., of a towing-path under powers conferred by a Navigation Act was held not to be a purpose rendering the ownership of the soil necessary; *Badger* v. *South Yorkshire, &c., Railway Co.*, 1 Ell. & Ell. 347. The present enactment does not contain any words conferring upon boards and vestries the powers and authorities given by ordinary sewers commissions, therefore they cannot proceed by presentment, amerciament, &c., for annoyances and encroachments. But sections 68 and 69 of 25 & 26 Vict. c. 102, impose penalties for various acts of wrongful interference with sewers. Neither the present section nor the 135th, vesting the main sewers in the metropolitan board, contains the exception found in the 7th section of the Metropolitan Sewers Act, 1848 (11 & 12 Vict. c. 112), vesting sewers in those commissioners "sewers made or to be made by any person or persons, for his or their own profit, or for the profit of the proprietors or shareholders." That exception was borrowed from the Public Health Act, 1848, into which it was introduced in order to preserve the rights of the Cheltenham Sewers Company, acting under a local Act. See Lawes' edition of the Public Health Act, 11 & 12 Vict. c. 63, note to the 44th section; and it is retained in the 13th section of the Public Health Act, 1875. See note to that section in

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metropolitan commissioners of sewers (*a*) which are situate in any parish mentioned in schedule (A.) to this Act (except such sewers as are mentioned in schedule (D.) to this Act), with the walls, defences, banks, outlets, sluices, flaps, penstocks, gullies, grates, works, and things thereunto appertaining, and the materials thereof, with all rights of way and passage used and enjoyed by such commissioners over or to such sewers, works, and things, and all other rights concerning or incident to such sewers, works, and things, shall become vested in the vestry of such parish; and all sewers vested in the said metropolitan commissioners which are situate within any district mentioned in schedule (B.) to this Act, except as before excepted, with all such works and things as aforesaid appertaining thereto, and all rights of way and passage used and enjoyed by such commissioners over or to such sewers, works, and things, and all other rights concerning or incident to such sewers, works, and things, shall become vested in the board of works, for such district; and all sewers made and to be made within any such parish or district, except sewers and works vested or to be vested in the metropolitan board of works, as hereinafter mentioned shall be vested in such vestry and board respectively.

Vestries and district boards to repair, &c., all sewers vested in them, and

69. The vestry of every parish mentioned in schedule (A.) to this Act, and the board of works for every district mentioned in schedule (B.) to this Act, shall (subject to the powers by this Act vested in the metropolitan board of works (*b*)) from time to time repair (*c*) and maintain the sewers under this Act vested in them, or such of them as shall not be discontinued, closed up, or destroyed under the powers herein contained, and shall cause to be made (*d*), repaired, and main-

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Lumley's edition of that Act, p. 21, and also *R.* v. *Local Board of Godmanchester*, L. R. 1 Q. B. (Ex. Ch.) 328.

(*a*) See 11 & 12 Vict. c. 102, s. 7 (now expired), as to sewers vested in the metropolitan commissioners of sewers.

(*b*) See proviso to this section prohibiting the making of new sewers without the previous approval of the Metropolitan Board of Works, and the 138th section, authorizing the metropolitan board to make orders for controlling vestries and district boards as to construction, &c., of sewers, and generally in relation to sewerage. And see now sections 45, 46, 47, 48, 49, 50, and 51 of 25 & 26 Vict. c. 102, *post*, as to the course to be pursued by vestries, district boards, &c., with respect to the construction of new sewers. See also section 83 of same Act, giving power to the Metropolitan Board of Works to make bye-laws for the guidance of vestries, &c., in the construction of sewers.

(*c*) It was decided to be a good return to a *mandamus* commanding a board of guardians to repair a sewer, that the sewer had been defectively constructed originally, and if repaired would create a nuisance; *R.* v. *Guard. of Epsom Union*, 8 L. T. (N.S.) 383.

(*d*) Though the language of this enactment is imperative, a discretion must be allowed to vestries, &c., as to the time at which such works should be executed; and, in other respects, therefore, a writ of *mandamus* which ordered the vestry of a parish, immediately after the receipt of the writ, to cause to be made such sewers and works as might be necessary for effectually draining a particular part of the parish, without showing that a reasonable time had elapsed, or that there was a present duty to drain that particular part at once, or that the approval of the metropolitan board had been obtained, was held to be defective; *R.* v. *The Vestry of St. Luke, Chelsea*, 31 L. J. Q. B. 50. See a full report of this case, setting out the return *in extenso*, in 26, J. P. 85. See *Ex parte Champ*, 20 J. P. 756, where a rule for a *mandamus* to the same vestry to make sewers in another part of the same

Section 69. from time to time to construct new ones, &c.

tained such sewers and works, or such diversions or alterations of sewers and works, as may be necessary for effectually draining their parish or district (*a*), and shall cause all banks, wharves, docks, or defences abutting on or adjoining any river, stream, canal, pond, or watercourse (*b*) in such parish or district to be raised, strengthened,

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parish had been discharged for want of a sufficient demand and refusal. See *Ex parte Parsons*, 22 J. P. 68, where an application for a *mandamus* to a local board to make a sewer was rejected.

(*a*) See section 58 of 25 & 26 Vict. c. 102, *post*, authorizing, subject to certain conditions, the construction of sewerage works by vestries and district boards beyond the limits of the metropolis; section 44 of 25 & 26 Vict. c. 102, *post*, authorizing owners of land to construct sewers for drainage thereof, at their own expense, and empowering vestries, &c., to contribute to the cost out of the rates; and 25 & 26 Vict. c. 102, s. 52, *et seq.*, as to construction of sewers by vestries at the cost, either in whole or in part, of private parties. Refer to Acts relating to the drainage of certain localities without the metropolitan area, cited in note to title of Act, p. 1, *ante*.

(*b*) The burthen of maintaining the river wall of the Thames in a parish comprised in a district constituted under the Metropolis Local Management Act, 1855, is now cast upon the board of works of that district, notwithstanding such river wall was included in the area subject to the jurisdiction of commissioners acting under a royal commission of sewers; so held by the Q. B. D. in the case of the board of works for the Plumstead district and the commissioners of sewers for the limits extending from Lombard's Wall to Gravesend Bridge, in the county of Kent. The only notice of this decision is found in the 41st vol. of the Justice of the Peace, p. 388, which only gives a condensed report of the judgment. The editor has since been favoured with a copy of the special case submitted for the opinion of the court, and with a full report of the judgment. From the former it appears, that up to the passing of the Metropolis Management Act, 1855, the river wall and defences bounding the levels subject to the jurisdiction of the commissioners, including the wall in question, had under the existing and preceding commissions always been maintained by the commissioners out of the funds levied by them as walscot or sewers rates, upon the owners and occupiers chargeable therewith according to the laws of sewers. In the year 1874 the commissioners raised the question of their liability to continue the maintenance of the river wall in the parish of Charlton, alleging that the burthen of such maintenance was now cast upon the board of works by virtue of 18 & 19 Vict. c. 120, a liability which was denied by the district board, and the question for the opinion of the court was whether or not the obligation still rested upon the commissioners; and the court decided that it did not, and that the district board were bound to perform that duty themselves. Mr. Justice *Lush* in delivering judgment, refers to the words "and shall cause all banks, &c., adjoining any river, &c., to be raised, strengthened, or altered, &c.," and says that they impose a specific obligation on the board of works, to protect their district from the inundation of the river, though he was not insensible to the possible inconvenience which might arise from the fact that an existing commission of sewers professed to embrace the area in question within its original district; and Mr. Justice *Mellor*, in delivering judgment against the district board, refers to that provision in the Act (section 159), which enables a vestry or district board to cause the sum required for expenses incurred for the special benefit of a particular part of a parish or district to be levied in that part. See note to section 159, *post*.

Refer to *Mayor of Lyme Regis* v. *Henley*, 1 Bing, 6, as to liability of a corporation for expenses incurred for injury resulting from the neglect to repair a sea-wall which they were bound by charter to repair.

See as to license by the Thames conservators to a riparian owner to erect an embankment; *Lyon* v. *Fishmongers' Co.*, L. R. 1 H. L. (E.) 662.

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or altered or repaired, where it may be necessary so to do, for effectually draining, or protecting from floods or inundation such parish or district; and it shall be lawful for any such vestry or district board to carry any such sewers or works through, across, or under any turnpike road (*c*), or any street or place laid out as or intended for a street (*d*), or through or under any cellar or vault which may be under the pavement or carriageway of any street, and into, through, or under any lands whatsoever (*e*), making compensation (*f*) for any damage done thereby as hereinafter provided; and it shall be lawful for any such vestry or district board from time to time to enlarge, contract, raise, lower, arch over, or otherwise improve or alter all or any of the sewers, watercourses, and works which shall be from time

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(*c*) See as to notice and other requirements in breaking up turnpike roads, 25 & 26 Vict. c. 102, s. 33, *post*.

(*d*) See interpretation of word "street," section 250. See 25 & 26 Vict. c. 102, s. 84, *post*, empowering vestries, &c., with consent of metropolitan boards, to stop up streets during their works.

(*e*) As to the right of carrying sewers through private property, see notes to section 135; and sections 34 and 35 of 25 & 26 Vict. c. 102, *post*, as to notices, plans, &c., of works affecting railways and canals. Under similar words in the Public Health Act, 1875, it was decided that a local board were authorized to make a sewer through private property raised *above* ground; *Roderick* v. *Aston Local Board*, L. R. 7 Ch. 328 (C.A.). Commissioners acting under a local Act and the local authority under the Nuisances Removal Act, were held to be empowered to make a sewer through enclosed land adjoining a highway not in the line of an existing watercourse; *Earl Derby* v. *Bury Imp. Commissioners*, L. R. 3 Ex. 121, reversing the decision of the court below.

Though a natural watercourse may in some degree be polluted, a district board constituted by this Act has no right to connect it with other sewers so as to become a nuisance; *Att.-Gen.* v. *Hackney Dist. Board*, 44 L. J. Ch. 545, nor to pollute water running through the land of another person; *Cator* v. *Lewisham Dist. Board* 5 B. & S. 115; and it makes no difference that the works of the board are necessary for abating a nuisance on the land of the person complaining, or that the water polluted lay out of the district for which the board was appointed; *ibid.*

A person sustaining damage by the overflow of a sewer, without the fault of the vestry, has no right of action against that body; *Hammond* v. *Vestry of St. Pancras*, 43 L. J. C. P. 157; and see as to non-liability of a vestry for damage caused by flooding from a gully connected with a drinking fountain erected by an association by permission of the vestry; *Gordon* v. *Vest. of St. James, Westminster*, 30 J. P. 24.

The Rivers Pollution Prevention Act, 1876, section 3, enacts that every person (defined by section 20 to include corporate and unincorporate bodies) who causes to fall or flow, or knowingly permits to fall or flow, or to be carried into any stream, any solid or liquid sewage matter, shall (subject as in the Act mentioned) be deemed to have committed an offence against the Act; and see special provision in same section with respect to sanitary authorities using the best practicable means for rendering sewage matter harmless. By section 20, the term sanitary authority includes in the metropolis, as defined by the Metropolis Management Act, 1855, any local authority acting under the Nuisances Removal Act, 1855, and the Acts amending the same. As to liability of vestries, district boards, and other public bodies, for damage resulting from negligence, see sections 96 and 135, *infra*, and proceedings for nuisance and injury by the pollution of streams and other acts, section 135.

(*f*) As to compensation for damage, see section 225, and note to section 135, as to claims for compensation and actions against boards and vestries.

Section 69. to time vested in them or subject to their order and control, and to discontinue, close up, or destroy such of them as they may deem to have become unnecessary: Provided always, that no new sewer shall be made without the previous approval of the metropolitan board of works (*a*): Provided also, that the discontinuance, closing up, destruction, or alteration of any sewer as aforesaid shall be so done as not to create a nuisance (*b*); and if by reason thereof any person shall be deprived of the lawful use of any covered (*c*) sewer, it shall be the duty of the vestry or district board to provide some other sewer or a drain as effectual for his use as the sewer of which he is so deprived: Provided also, that where the vestry or district board alter any sewer, or provide a new sewer in substitution for a sewer discontinued, closed up, or destroyed, they may contract or otherwise alter the private drains communicating with the sewer so altered, or with the sewer so discontinued, closed up, or destroyed, or may close up or destroy such private drains, and provide new drains in lieu thereof, as the circumstances of the sewerage may appear to them to require, but so that in every case the altered or substituted drain shall be as effectual for the use of the person entitled thereto as the drain previously used (*d*).

Power to vestries and district boards

70. Wherever any party is, by prescription, by reason of tenure, or otherwise, liable by law to maintain or do any repairs to sewers (*e*), watercourses, or works in any such parish or district which the

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(*a*) See proviso to section 58 of 25 & 26 Vict. c. 102, *post*, making this consent necessary in all cases where new sewers are constructed by any vestry, district board, or other body having control over sewers within the metropolis.

(*b*) Refer to *Southampton, &c., Bridge Company* v. *Local Board of Health of Southampton*, 28 L. J. Q. B. 41, where it was laid down that an action will lie against a local board for improperly constructing a sewer, and causing a nuisance; and see notes to sections 96 and 135, *infra*.

(*c*) The word "covered" does not occur in the 38th section of the Metropolitan Sewers Act (11 & 12 Vict. c. 112), from which this provision has been adopted. This addition was intended to exclude claims by parties draining into open watercourses.

(*d*) Where a metropolitan vestry proposed under section 73 to make a new scheme of drainage, and upon default of the householders to make new drains, and the vestry made them themselves, and attempted to recover the cost from the householders, the occupier was decided not to be compellable to make a new drain or bear the cost of constructing it, on the ground that the facts brought the case under section 69; *Vestry of St. Marylebone* v. *Viret*, 34 L. J. M. C. 214.

It was decided under section 55 of the Metropolis Management Amendment Act, 1862, that where a person had constructed a sewer in a new street with the sanction of the metropolitan board, and the district board took it up and laid down another, he was not liable to pay any portion of the cost; *Fulham District Board* v. *Goodwin*. L. R. 1 Ex. D. (C. A.) 400.

(*e*) As to the obligation of individuals in respect of sewers works in general, see Callis, p. 115, and Serg. Woolrych, Law of Sewers, 3rd edition, 87 *et seq.*, and the 15th section of 3 & 4 Will. 4, c. 22. Amongst the liabilities mentioned by Callis, *ubi supra*, is what he designates "the custom of Frontagers," and he says, "In 37 Lib. Assis. *plac.* 10, it seems that the Frontagers are bound to the repairs," and "he whose grounds are next adjoining to a highway is bound to repair the same"; and again, "the ownership of a bank, wall, or other defence is a sufficient warrant to impose the charge of the repairs thereof upon him without being tied thereto by prescription as appears, 8 Hen. 7, fol. 5; and it stands with reason that every man should be bound to repair his own, and the consideration is also

vestry or district board judge it necessary to alter or improve, it shall be lawful for them to make such alterations or improvements

Section 70.

moving for that his grounds which lie nearest the waters are soonest subject to drowning, and if any increase be upon the small rivers it falls to his share." This exposition of the law was closely scrutinised and its correctness denied by the court in the recent case of *Hudson* v. *Tabor*, L. R. 1 Q. B. D. 225, affirmed on appeal, L. R. 2 Q. B. D. (C. A.) 290; 42 J. P. 20, where it was decided that there was no prescriptive liability on the owner of a sea wall to maintain the wall, not only for his own protection, but for the benefit of his neighbours, and that by the common law, apart from prescription, no such liability was cast upon the defendant, the owner; and the court, after reviewing the cases cited by *Coke*, say that they do not establish the common law liability contended for. Several examples of liabilities, such as are described in this section, are found in the records of the former sewers' commissions existing within the metropolitan limits. Under the Greenwich commission various parties were held liable to do works of repair, raise the river wall, scour and bottom ditches, cut weeds, &c., by reason of tenure. This commission, the limits of which extended from the head of the Ravensbourne to Lombard's wall, in the county of Kent, as also the Surrey and Kent commission, having jurisdiction from East Moulsey, in Surrey, to the river Ravensbourne, in Kent, were both subject to the provisions of 3 & 4 Will. 4, c. 22. The course pursued by the Greenwich commission was to issue their precept to the sheriff to return a jury, and the jury impannelled were sworn by the court to inquire (amongst other matters) of the persons, &c., who, by reason of their tenure of certain lands, tenements, or hereditaments, were bound to repair or contribute to the repair of walls, defences, &c., or do other works the cost of which was not payable out of the general taxes and levies raised within the level, and also to inquire what works were necessary. The jury then heard evidence, and delivered their presentment into court; upon which the court decreed the works, and ordered notices to be served upon the parties ordering their execution, on pain of forfeiting certain sums which were specified. Subsequently the wall reeve presented cases of non-repair. Besides the maintenance, &c., of ditches and causeways, some of these works extended to the raising or repairing of the bank or wall of the river Thames, and at one time the liability to perform such works seems to have been considered a ground of exemption from the general assessments imposed upon the level. There are also a few cases of presentments by juries of similar obligations attaching to individuals in the parish of Rotherhithe and elsewhere within the Surrey and Kent commission, such as to strengthen and heighten the bank and wall of the Thames, so as to resist the tidal waters; but there is reason to doubt whether, under that commission, those liabilities were, in later times at least, ever enforced by adverse proceedings. Similar liabilities also existed under the Poplar commission, the court proceeding on the presentment of the Marsh jury, and compelling the execution of the requisite works. The terms of the 61st section of 3 & 4 Will. 4 excluded this commission and the other sewers' commissions in Middlesex from its operation; and the course of proceeding under it somewhat differed from that provided under the commissions south of the Thames, to which the Act applied; but obligations generally similar in character to those existing under the Greenwich commission were habitually enforced.

Up to the passing of this Act the river wall in the parish of Charlton had been maintained by the commissioners of sewers for the limits extending from Lombard's wall to Gravesend bridge, out of the funds levied by them as walscot or sewer rates chargeable upon the owners and occupiers of the lands benefited, but it has now been decided by the Q. B. D. in the case of the *Board of Works for the Plumstead District* v. *Commissioners of Sewers* (Lombard's wall to Gravesend bridge), referred to in note to section 69, *supra*, that this Act has cast that obligation upon the district board, who, it is believed, levy special rates under section 159 upon the owners and occupiers of low-lying or marsh lands; see note to section 159.

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to do works of improvement in sewers, &c., the expense of which to be divided between the party liable and the parish or district.

therein as they think proper, and to divide the expense of such alterations or improvements between the party liable to such maintenance or repairs and the parish, district, or persons who would have been wholly liable to the expense of such alterations or improvements if no party had been liable as aforesaid, so as to throw on the party liable to such maintenance or repairs such part of the expense of alterations or improvements as may be equal to what would be incurred for such maintenance or repairs, and to throw on the parish, district, or persons aforesaid the residue of such expense, and to settle and adjust such proportions either by some general regulation or by order in each particular case, as they may think proper: Provided always, that nothing in this Act con-

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The ordinary mode of establishing such a liability is by the inquisition of a jury; see *Wingate* v. *Waite*, 6 M. & W. 739; and *R.* v. *Warton*, 2 B. & S. 719; and liability of a mortgagor to repair a sea wall without notice, *R.* v. *Baker*, L. R. 2 Q. B. 621. See further, *Morland* v. *Cook*, L. R. 6 Eq. 252; and *R.* v. *Commissioners of Sewers of Essex*, 1 B. & C. 477. The present Act, however, contains no provision for summoning a jury. The 144th section of 11 & 12 Vict. c. 112 (Metropolitan Sewers Act, 1848), provided that the Sewers Act, 3 & 4 Will. 4, c. 22, should not apply to any commission issued under it, but the 96th section expressly empowered the metropolitan commissioners of sewers, on the trial of *appeals against sewers rates*, to try the question of the appeal by a jury in the same manner as a traverse of a presentment of rateability was triable according to the laws and usages of sewers, and on the trial of such appeals it is obvious that questions affecting liabilities of this nature must sometimes have incidentally arisen. The 59th section of the same Act empowered the metropolitan commissioners to do or direct any work to be done, and exercise all the powers of the Act in relation thereto upon the information or presentment of *their surveyor*, without any other presentment in relation thereto; and though the 68th section of the present Act transfers to the vestry, &c., all the rights of their predecessors *concerning or incident to* sewers, those words do not seem to include the power of proceeding by presentment. The liability might probably be established by production of the inquisitions, decrees, &c., of the sewers' commissioners, and by proof that they were obeyed, though there is authority to show that proof of obedience might be dispensed with. In *R.* v. *Leigh*, 2 P. & Dav. 357; S. C. 10 Ad. & E. 398, orders of courts of sewers commencing more than seventy years previously were admitted in evidence, though it was not shown that such orders had been complied with. The court in that case laid it down that such orders were good evidence as adjudications by a court of competent jurisdiction upon the subject-matter, unless they were affected by proof of fraud or collusion, and that at so great a distance of time their execution might be presumed. An indictment at common law probably lies against a party liable *ratione tenurae* to repair, &c. See *R.* v. *Earl Cadogan*, 5 B. & Al. 902, where on an indictment for a nuisance by not repairing, pursuant to his liability *ratione tenurae* a bank and wall next the Thames, whereby a highway in the parish of Chelsea was in danger of being flooded, the court refused to grant an inspection of the court of rolls of the defendant's manor on the ground that the proceeding was a criminal one. In *R.* v. *Gamble*, 11 A. & E. 69, the court refused a *mandamus* to landowners liable *ratione tenurae* to amend and heighten banks, but that was on the ground that the applicants, the conservators of the Bedford Level, had the authority of commissioners of sewers, and might proceed by presentment; see *R.* v. *Commissioners of Pagham*, 1 B. & C. 255; *R.* v. *Ouse Bank Commissioners*, 3 A. & E. 344. Refer to the case of *The Mayor of Lyme Regis* v. *Henley*, 3 B. & Ad. 77, showing the liability of a corporation under a charter to repair buildings, sea banks, &c, and inasmuch as the obligation concerned the public, that the corporation might be indicted.

tained shall exempt from liability to do any works, or to pay the whole cost thereof, any person who, by prescription, by reason of tenure, or otherwise by law, is so liable. Section 70.

71. Every district board and vestry shall, by providing proper traps or other coverings, or by ventilation, or by such other ways and means as shall be practicable for that purpose, prevent the effluvia of sewers from exhaling through gullyholes, gratings, or other openings of sewers in any of the streets or other places within their district or parish. Gullyholes, &c., to be trapped (*a*).

72. Every vestry and district board shall cause the sewers vested in them to be constructed, covered, and kept so as not to be a nuisance or injurious to health, and to be properly cleared, cleansed, and emptied, and for the purpose of clearing, cleansing, and emptying the same they may construct and place, either above or under ground, such reservoirs, sluices, engines, or other works as may be necessary (*c*). Vestries and district boards to cause sewers to be cleansed, &c. (*b*).

73. If any house (*d*) or building, whether built before or after the commencement of this Act, situate within any such parish or district, be found not to be drained by a sufficient drain communicating with some sewer, and emptying itself into the same, to the satisfaction of the vestry or board of such parish or district, and if a sewer of sufficient size be within one hundred feet of any part of such house or building, on a lower level than such house or building, it shall be lawful for the vestry or board, at their discretion, by notice in writing (*e*), to require the owner of such house or building forthwith, or within such reasonable time as may be appointed by the vestry or board, to construct and make from such house or building into any Vestry or district board in certain cases may compel owners, &c., of houses to construct drains into the common sewer.

(*a*) See notice to metropolitan board, &c., required before trapping their sewers, 25 & 26 Vict. c. 102, s. 27, *post*.

(*b*) This imposes upon the bodies named the duty of exercising reasonable care to keep sewers clean; and where the jury found that the obstruction of a drain causing damage could not by the exercise of reasonable care have been foreseen, the vestry were held not liable for a breach of the duty hereby imposed; *Hammond* v. *Vestry of St. Pancras*, L. R. 9 C. P. 316.

Where a local board had constructed a sewer without a flap, they were held liable for damages by flooding premises thereby; *Ruck* v. *Williams*, 27 L. J. Ex. 357. See action against a district board for neglecting to keep a sewer clean; *R.* v. *Whitechapel Board of Works*, 1 F. & F. 144; *Brown* v. *Sargent*, 1 F. & F. 112; *Blyth* v. *Birmingham Waterworks Company*, 25 L. J. Ex. 212; *Geddin* v. *Proprietors of the Bourne Reservoir*, L. R. 3 App. Ca. H. L. 430.

(*c*) A local board of health has no power under Public Health Act, 1848, to enter upon land without the owner's consent for purpose of making reservoirs for retaining the sewage; *Sutton* v. *Mayor of Norwich*, 27 L. J. Ch. 739.

(*d*) The word "house" under the Public Health Act, 11 & 12 Vict. c. 63, was held to apply to a toll-house on a turnpike road; *Trustees of Tunstall Turnpike Roads* v. *Lowndes*, 20 J. P. 374. In the case of the *Poplar District Board* v. *Knight*, 28 L. J. M. C. 37, the Court of Queen's Bench intimated an opinion that a house built with foundations placed on the surface without any digging out, was within the 76th section of this Act.

(*e*) Under section 69 of Public Health Act, 1848, a notice not specifying the works, but referring for particulars to the surveyor's office, was held sufficient; *Bailey* v. *Wilkinson*, 33 L. J. M. C. 161.

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such sewer a covered drain, and such branches thereto, of such materials (*a*), of such size, at such level, and with such fall as shall be adequate for the drainage of such house or building, and its several floors or storeys, and also of its areas, waterclosets, privies, and offices (if any), and for conveying the soil, drainage, and wash therefrom into the said sewer, and to provide fit and proper paved or impermeable sloped surfaces for conveying surface water thereto, and fit and proper sinks, and fit and proper syphoned or otherwise trapped inlets and outlets for hindering stench therefrom, and fit and proper water supply (*b*), and water supplying pipes, cisterns, and apparatus for scouring the same, and for causing the same to convey away the soil, and fit and proper sand traps, expanding inlets, and other apparatus for hindering the entry of improper substances therein, and all other such fit and proper works and arrangements as may appear to the vestry or board, or to their officers, requisite to secure the safe and proper working of the said drain, and to prevent the same from obstructing or otherwise injuring or impeding the action of the sewer to which it leads; and it shall be lawful for the said vestry or board to cause the said works to be inspected while in progress, and from time to time during their execution to order such reasonable alterations therein, additions thereto, and abandonment of part or parts thereof, as may to the vestry or board or their officers appear, on the fuller knowledge afforded by the opening of the ground, requisite to secure the complete and perfect working of such works; and if the owner of such house or building neglect or refuse, during twenty-eight days after the said notice has been delivered to such owner, or left at such house or building, to begin to construct such drain and other works aforesaid, or any of them, or thereafter fail to carry them on and complete them with all reasonable despatch, it shall be lawful for the vestry or board to cause the same to be constructed and made (*c*), and to recover the expenses to be incurred thereby from such owner in the manner hereinafter provided (*d*).

Penalty on owner, &c., for neglect.

Provision for combined drainage of blocks of houses (*e*).

74. If it appear to the vestry or board of any parish or district that a group or block of contiguous houses, or of adjacent detached or semi-detached houses, may be drained and improved more economically or advantageously in combination than separately, and a sewer of suffi-

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(*a*) See as to the discretion given to vestries to determine the material to be used, *Austin* v. *St. Mary, Lambeth*, cited in note to section 76, *post*; and as to the power of a local board of health to decide on the works requisite for the removal of a nuisance; *Hargreaves* v. *Taylor*, 32 L. J. M. C. 111; 3 B. & S. 413.

(*b*) See section 67 of 25 & 26 Vict. c. 102, *post*, authorizing vestries to compel owners of houses to obtain supply of water, at a rate not exceeding 3*d*. per week, and as to proceedings in case of deficient supply.

(*c*) See section 64 of 25 & 26 Vict. c. 102, *post*, authorizing vestries under this and the 74th, 76th, 81st, 85th, and 86th sections, to execute the works or proceed for the penalties.

(*d*) See sections 225 and 226, *post*.

(*e*) By the 250th section, any drain for draining a group of houses by a combined operation under the orders of vestries, falls within the definition of a drain as contradistinguished from a sewer. But as combined drainage was laid down before the passing of the Act under the direction of the Metropolitan Commissioners of Sewers, and claims were made on the vestries to maintain such drainage at the public cost, the meaning of the word "drain" has been extended by the 112th section of 25 & 26 Vict. c. 102, so as to include drains of this nature laid down before the passing of the Act.

cient size already exist or be about to be constructed within one hundred feet of any part of such group or block of houses, whether contiguous, detached, or semi-detached, it shall be lawful for such board or vestry to order that such group or block of houses be drained and improved, as hereinbefore provided, by a combined operation. Section 74.

No house to be built without drains constructed to the satisfaction of the vestry or district board (*f*).

75. It shall not be lawful to erect any house or other building in any parish mentioned in schedule (A.) to this Act, or in any district mentioned in schedule (B.) to this Act, or to rebuild any house or building within any such parish or district which has been pulled down to or below the floor commonly called the ground floor, or to occupy any house or building so newly built or rebuilt, unless a drain and such branches thereto and other connected works and apparatus and water supply as hereinbefore mentioned be constructed and provided to the satisfaction of the surveyor of the vestry of such parish or board of works for such district, of such materials, of such size, at such level, and with such fall as they may direct, so that the same shall be available for the drainage of the lowest floor of such house or building, and of its several floors or stories, and also of its areas, waterclosets, privies, and offices (if any), which drain shall lead from such house or building, or the intended site of such house or building, to such sewer, already made or intended to be constructed near thereto, as the vestry or board shall direct and appoint, or if there be no such sewer existing or intended to be constructed within one hundred feet of any part of the intended site of such house or building, then to such covered cesspool (*g*) or other place, not being under any dwelling house, as the vestry or board shall direct; and whenever any house or building is rebuilt as aforesaid, the level of the lowest floor of such house or building shall be raised sufficiently to allow of the construction of such a drain and such branches thereto and other works and apparatus as are hereinbefore required, and for that purpose the levels shall be taken and determined under the direction of the vestry or district board.

Notice of

76. Before beginning to lay or dig out the foundation (*h*) of any

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(*f*) This clause is founded on the 46th section of the Metropolitan Sewers Act, 1848, 11 & 12 Vict. c. 120, but it omits the provision which was contained in that enactment, authorizing the commissioners to compel the owner or occupier of the house to continue *sewers* situate within a certain distance of the premises to be drained. The intention of this Act seems to be to confine the obligations of private parties to the making of drains, and to throw the responsibility and cost of constructing sewers on public bodies. See *Clarke* v. *Vestry of Paddington*, cited in note to section 76. See now the provisions relating to the construction of sewers in new streets, and in streets in which there had either been no sewers or only open sewers, 25 & 26 Vict. c. 102, s. 52, *et. seq. post*, and section 57, giving an appeal to the metropolitan board against orders of vestries, &c., as to the amount or apportionment of the expenses of constructing sewers wholly or partly at the cost of private parties.

(*g*) See 25 & 26 Vict. c. 102, s. 66, *post*, as to temporary provision for drainage into cesspools or tanks where there are no proper sewers within two hundred feet.

(*h*) By 25 & 26 Vict. c. 102, s. 88, *post*, any person omitting to give this notice is made liable to a penalty not exceeding 5*l.*, and to a continuing penalty of 40*s.* for every day such omission shall continue. See case of *Poplar District Board of Works* v. *Knight*, 28 L. J. M. C. 37, referred to in note to section 73, *supra*. See Metropolis Management and

Section 76. buildings to be given to the vestry or district board before commencing the same.

new house or building (*a*) within any such parish or district, or to rebuild any house or building therein, and also before making any drain for the purpose of draining directly or indirectly into any sewer under the jurisdiction of the vestry or board of or for any such parish or district, seven days' notice in writing shall be given to the vestry or board by the person intending to build or rebuild such house or building or to make such drain; and every such foundation shall be laid at such level as will permit the drainage of such house or building in compliance with this Act, and as the vestry or board shall order, and every such drain (*b*) shall be made in such direction, manner, and form, and of such materials (*c*) and workmanship, and with such branches thereto and other connected works and apparatus and water supply as hereinbefore mentioned, and as the vestry or board shall order, and the making of every such drain shall be under the survey and control of the vestry or board; and the vestry or district boards shall make their order in relation to the matters aforesaid, and cause the same to be notified to the person from whom such notice was received within seven days (*d*) after the receipt of such notice, and in default of such notice, or if such house, building, or drain, or branches thereto, or other connected works and apparatus and water supply, be begun, erected, made, or provided in any respect contrary to any order of the vestry or board made and notified as aforesaid, or the provisions of this Act, it shall be lawful for the vestry or board to cause such house or building to be demolished or altered, and to cause such drain or branches thereto and other connected works and apparatus and water supply to be relaid, amended, or remade, or, in the event of omission, added, as the case may require, and to recover the expenses thereof from the owner thereof in the manner hereinafter provided (*e*).

Power to

77. (*f*) It shall be lawful for any person, at his own expense, to

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Building Acts Amendment Act, 1878 (*post* appendix), empowering the Metropolitan Board of Works to make regulations as to the sites and foundations of houses.

(*a*) As to the meaning of word "building" see notes to section 143 of this Act, and section 75 of Metropolis Management Amendment Act, 1862, *post*.

(*b*) They have no power to order a person to construct *a sewer*, and where a party had in misapprehension of his rights built one and the vestry had ordered him to continue it, and on non-compliance threatened to put their powers in force, an injunction was granted to restrain them from demolishing or injuring the houses or preventing their completion; *Clarke* v. *Vestry of Paddington*, 5 Jur. (N.S.) Ch. 138.

(*c*) Under this section it was held that the vestry have the right to determine which of two descriptions of pipes should be used, and the vestry having required Lambeth pipes, the court refused on information to restrain them from entering upon the plaintiff's premises for the purpose of taking up works constructed with Aylesford pipes; *Austin* v. *Vestry of St. Mary, Lambeth*, 27 L. J. Ch. 677.

(*d*) See extension of this period to 15 days by section 63 of 25 & 26 Vict. c. 102, *post*.

(*e*) A district board have no right to pull down a house under this enactment without giving the owner an opportunity to show cause why it should not be demolished, *Cooper* v. *Wandsworth District Board*, 32 L. J. C. P. 185; nor a local board of health where a building is alleged to contravene a bye-law, *Masters* v. *Pontypool Local Board*, L. R. 9 Ch. D. 677. As to the recovery of expenses see sections 225, 226, *post*.

(*f*) This section is repealed by the 61st section of 25 and 26 Vict. c. 102, *post*, which introduces new provisions with respect to branching drains into sewers. See decision as to the drainage of houses in note to that section, *post*.

Section 77.

branch drains into sewers constructed by metropolitan board, or any vestry or district board, under certain regulations.

make or branch any drain into any of the sewers vested in the metropolitan board of works or any vestry or district board under this Act, or authorized to be made by them under this Act, such drain being of such a size, and of such conditions, and branched to such sewer, in such a manner and form of communication in all respects as the vestry or board shall direct or appoint; and in case any person make or branch any drain into any of the said sewers so vested in the vestry or board, or authorized to be made by them under this Act, of a larger size, or of different conditions, or in a different manner and form of communication than shall be directed or appointed by the vestry or board, every person so offending shall for every such offence forfeit a sum not exceeding fifty pounds.

Penalty.

Power to metropolitan board or vestry or district board to branch private drains into sewers, at the expense of the party to whom they belong.

78. Whenever it is necessary to open any part of the pavement of any street or public place, for the purpose of making or branching any private drain into any of the sewers or drains vested in the metropolitan board of works, or any vestry or district board under this Act, or authorized to be made by them under this Act, it shall be lawful for the vestry or board, in case they think fit so to do, to make so much and such part of such private drain, and also to construct so much and such part of the work necessary for branching the same into the public sewers as shall be under or in any street, and to recover the expenses incurred thereby from the owner of the house, building, or ground to which such private drain belongs, in the manner hereinafter provided (*g*).

Vestry or district board may agree to make house drains at the expense of owners or occupiers (*h*).

79. It shall be lawful for any such vestry or board to contract and agree with the owners or occupiers of any houses, buildings, or ground that any drains required to be made, altered, or enlarged by such owners shall be constructed, made, altered, and enlarged by the vestry or board; and the cost price of making, altering, or enlarging such drains, as certified by the surveyor of the vestry or board, shall be repaid by the owner or occupier so agreeing to the vestry or board, and in default of payment the same may be recovered in the manner herinafter provided.

Vestry or district board may order a contribution towards construction of sewers in certain cases (*i*).

80. Where any sewer in any of the parishes mentioned in either of the schedules (A.) and (B.) to this Act, into which any drain shall be made or branched, has been built since the third day of September, 1813, and before the commencement of this Act, at the expense of any person or body other than any commissioners of sewers, the vestry or district board in whom such sewer is vested may order such sum as they may deem just to be paid and contributed by the owner of the house to which such drain belongs towards the expense of the construction of such sewer, such sum shall, on the receipt thereof by such vestry or board, be paid over to the person or body aforesaid, and such vestry or board may, if they see fit, order and accept payment of such sum, with interest after a rate not exceeding £5 for the £100 by the year, by instalments within any period not exceeding twenty years.

(*g*) As to recovery of expenses, see sections 225, 226, *post*.

(*h*) As to responsibility of local authority for damage caused by negligent construction of a private drain refer to *Hall* v. *Mayor of Batley*, 45 L. T. (N.S.) 148.

(*i*) See section 59 of 25 & 26 Vict. c. 102, *post*, extending this provision to main sewers, and to sewers built since 1st January, 1856, or hereafter to be built at the cost of private parties.

Section 81.

Penalty on erecting or rebuilding houses without proper water-closets, &c.

Power for vestry, &c., to require owners, &c., to provide sufficient water-closets, &c.

If owners fail, vestry, &c., to cause the work to be done at their expense.

81. After the commencement of this Act it shall not be lawful newly to erect any house, or to rebuild any house pulled down to the extent aforesaid, within any parish mentioned in schedule (A.) to this Act, or any district mentioned in schedule (B.) to this Act, without a sufficient watercloset or privy and ashpit furnished with proper doors and coverings, and also furnished as regards the watercloset with suitable water supply and water supply apparatus, and with suitable trapped soilpan and other suitable works and arrangements, so far as may be necessary to ensure the efficient operation thereof; and whosoever shall offend against this enactment shall be liable to a penalty not exceeding £20 (*a*), and if at any time it appear to the vestry or district board of such parish or district that any house in any such parish or district, whether built before or after the commencement of this Act, is without a sufficient watercloset or privy and ashpit furnished with proper doors and coverings, and with other apparatus and works as aforesaid, the vestry or district board shall, in case the same can be provided without disturbing any building, give notice in writing to the owner or occupier of such house, requiring him forthwith, or within such reasonable time as shall be specified in such notice, to provide a sufficient watercloset or privy and ashpit so furnished as aforesaid, or either of them, as the case may require (*b*); and if such notice be not complied with, it shall be lawful for the vestry or district board to cause to be constructed a sufficient watercloset or privy and ashpit, or either of them, or do such other works as the case may require, and to recover the expenses incurred by them in so doing from the owner (*c*) of such house in manner hereinafter provided (*d*): Provided always, that where a watercloset or privy has been and is used in common by the inmates of two or more houses, or if in the opinion of the vestry or district board a watercloset or privy may be so used, they need not require the same to be provided for each house.

Power for vestries and district boards to authorize inspection of drains, privies, and cesspools.

82. It shall be lawful for any such vestry or board, or for their surveyor or inspector, or such other person as they appoint, to inspect any drain, watercloset, privy, cesspool, or water supply apparatus, or sinks, traps, syphons, pipes, or other works or apparatus connected therewith, within the parish or district of such vestry or board, and for that purpose, at all reasonable times in the daytime, after twenty-four hours' notice in writing has been given to the occupier of the premises to which such drain, watercloset, privy, cesspool, or water supply apparatus, or other connected works or apparatus as aforesaid, is attached, or left upon the premises, or in case of emergency without

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(*a*) As to recovery of penalty, see section 227, *post*.

(*b*) Under this provision, a vestry or district board may require the owner or occupier of a house to provide a sufficient watercloset, and in case of non-compliance, may cause it to be constructed, and may recover the expenses from the owner; *Vestry of St. Luke, Middlesex*, v. *Lewis*, 31 L. J. M. C. 73; but they must exercise their authority with regard to the circumstances of each particular case, and not merely lay down a general rule, such as that all privies in the district shall be turned into watercloset; *Tinkler* v. *Wandsworth District Board of Works*, 27 L. J. Ch. 342.

(*c*) Where works of paving, levelling, &c., a street not a highway, were executed by a contractor for a local board, who through an irregularity in the proceedings failed to recover their cost from the owners, the contractor was held entitled to recover against the board; *Worthington* v. *Sudlow* 31 L. J. Q. B. 131.

(*d*) See section 225, *post*.

notice, to enter, by themselves or their surveyor or inspector and workmen, upon any premises, and cause the ground to be opened in any place they think fit, doing as little damage as may be. Section 82.

Penalty on persons improperly making or altering drains (*e*).

83. In case any drain, watercloset, privy, cesspool, or water supply, or water supply apparatus, or other connected works or apparatus, hereinbefore mentioned, be found, on inspection, not to have been made or provided according to the directions or regulations of the vestry or district board, or contrary to the provisions of this Act, or in case any person, without the consent of the vestry or district board construct, rebuild, or unstop any sewer, drain, watercloset, privy, or cesspool, which may have been ordered by them not to be made, or to be demolished or stopped up, or in case any person discontinue any water supply, or destroy any connected works or apparatus as aforesaid, or in case any person, without the consent of the vestry or district board, break into any sewer vested in such vestry or board, every person (*f*) so offending shall forfeit and pay any sum not exceeding £10; and in case the person so making any sewer, drain, watercloset, privy, cesspool, or other works or apparatus as aforesaid, contrary to the directions or regulations of the vestry or board, or contrary to the provisions of this Act, or, without such consent as aforesaid, constructing, rebuilding, or unstopping any sewer, drain, watercloset, privy, or cesspool which may have been ordered to be demolished or stopped up, or discontinuing any water supply or destroying any connected works or apparatus as aforesaid, or breaking into any such sewer as aforesaid, do not, within fourteen days after notice in writing by the vestry or board, cause such sewer, drain, watercloset, privy, or cesspool to be altered or reinstated in conformity with the directions of the vestry or board, or, as the case may be, to be demolished or stopped up, or such water supply to be renewed, or such connected works or apparatus to be restored, then and in every such case the vestry or board may cause the work to be done, and the expenses thereof shall be paid by the person who has so offended.

Where no default found, expenses to be paid by vestry or board.

84. If such drain, watercloset, privy, cesspool, or water supply, or water supply apparatus, or other connected works and apparatus, be found on inspection as aforesaid to be made to the satisfaction of the vestry or board, and in proper order and condition, they shall cause the same to be reinstated and made good as soon as may be, and the expense of examination, reinstating and making good such drain, watercloset, privy, cesspool, or other works or apparatus as aforesaid, shall be defrayed by the vestry or board, and full compensation (*g*) shall be made by them for all damages or injuries done or occasioned by the examination of any such drain, watercloset, privy, cesspool, or other works or apparatus as aforesaid.

Vestry or district board to cause drains, &c.,

85. If, upon such inspection as aforesaid, any drain, watercloset, privy, or cesspool appear to be in bad order and condition, or to require cleansing, alteration, or amendment, or to be filled up, the vestry or board shall cause notice in writing to be given to the owner

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(*e*) See 25 & 26 Vict. c. 102, ss. 68 and 69, *post*, declaring penalties in case of encroachments on or wrongful interference with sewers.

(*f*) The penalties declared by this and other provisions of the Act are, by 25 & 26 Vict. c. 102, s. 65, *post*, extended to all persons causing the commission of the offence.

(*g*) See sections 225 and 226, as to the recovery of compensation.

Section 85. — to be put into proper condition, &c., where necessary.

or occupier of the premises upon or in respect of which the inspection was made, requiring him forthwith, or within such reasonable time as shall be specified in such notice, to do the necessary works; and if such notice be not complied with by the person to whom it is given, the vestry or board may, if they think fit, execute such works, and the expenses (*a*) incurred by them in so doing shall be paid to them by the owner or occupier of the premises.

Vestry and district board to cause offensive ditches, drains, &c., to be cleansed or covered.

86. Every vestry and district board shall drain, cleanse, cover, or fill up, or cause to be drained, cleansed, covered, or filled up, all ponds, pools, open ditches, sewers, drains, and places containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health, which may be situate in their parish or district; and they shall cause written notice to be given to the person causing any such nuisance, or to the owner or occupier of any premises whereon the same exists, requiring him, within a time to be specified in such notice, to drain, cleanse, cover, or fill up such pond, pool, ditch, sewer, drain, or place, or to construct a proper sewer or drain for the discharge of such filth, water, matter, or thing, or to do such other works as the case may require; and if the person to whom such notice is given fail to comply therewith, the vestry or board shall execute such works (*b*) as may be necessary for the abatement of such nuisance, and may recover the expenses thereby incurred from the owner of the premises in manner hereinafter mentioned: Provided always, that it shall be lawful for such vestry or board, where they think it reasonable, to defray all or any portion of such expenses, as expenses of sewerage are to be defrayed under this Act: Provided also, that where any work by any vestry or district board done or required to be done in pursuance of the provisions of this Act interferes with or prejudicially affects any ancient mill, or any right connected therewith, or other right to the use of water, full compensation shall be made to all persons sustaining damage thereby, in manner hereinafter provided (*c*), or it shall be lawful for the vestry or board, if they think fit, to contract for the purchase of such mill, or any such right connected therewith, or other right to the use of water; and the provisions of this Act with respect to the purchases by the vestry or board hereinafter authorized shall be applicable to every such purchase as aforesaid (*d*).

Where works interfere with any ancient mill, &c., compensation to be made, or rights therein purchased.

(*a*) As to recovery of expenses, see sections 225, 226

(*b*) By 25 & 26 Vict. c. 102, s. 64 (*post*), the vestry or district board may either execute these works themselves or proceed for penalties. An order of a court of summary jurisdiction to clean a ditch and execute structural work under the Public Health Act, 1875, runs from the date of the decision and not of the service of the order; *R.* v. *Barnet Rural Sanitary Authority*, L. R. 1 Q. B. D. 358; and see *R.* v. *St. Alban's Rural Sanitary Authority*, 41 J. P. 6. See the power conferred upon the local authority by the 22nd section of the Nuisances Removal Act, 18 & 19 Vict. c. 121, to lay down a sewer where any ditch, &c., is a nuisance and not necessarily in the old line of watercourse; *Earl of Derby* v. *Bury Improvement Commissioners*, L. R. 3 Ex. 121, cited in note to section 69, *ante*.

(*c*) See sections 225, 226.

(*d*) It was laid down by the Master of the Rolls in *Stainton* v. *Woolrych*, *Stainton* v. *Metropolitan Board of Works and the Lewisham District Board of Works*, 26 L. J. Ch. 300, that the corresponding proviso in the Metropolitan Sewers Act, 1848, 11 & 12 Vict. c. 112, s. 50, was not limited to the previous part of that section, but that it extended to any work done

Section 87.

Power to vestries and district boards to fill up ditches by the side of roads, and substitute pipes.

87. It shall be lawful for any vestry or district board, where they think fit, to cause the ditches at the sides of or across public roads and byeways and public footways (*e*) to be filled up, and to substitute pipe or other drains alongside or across such roads and ways, with appropriate shoots and means of conveying water from such roads and ways thereinto, and from time to time to repair and amend the same; and the surface of land gained by filling up such ditches may, if the vestry or board so think fit and direct, be thrown into such roads and ways, and be repairable as part thereof, and be under the control of the surveyors of the highways, or other person in charge of such roads, byeways, or footways.

Power to vestries and district board to provide public conveniences (*f*).

88. It shall be lawful for every vestry and district board to provide and maintain urinals, waterclosets, privies, and like conveniences, in situations where they deem such accommodation to be required, and to supply the same with water, and to defray the expense thereof, and any damage occasioned to any person by the erection thereof, and the expense of keeping the same in good order, as expenses of sewerage, are to be defrayed under this Act.

Vestries and district boards may transfer their powers as to sewerage to the metropolitan board of works (*g*).

89. If any vestry or district board desire to transfer to the metropolitan board of works the powers and duties vested in such vestry or district board in relation to sewerage and drainage, and a resolution for so transferring such powers and duties be passed by a majority at a meeting of such vestry or district board, specially convened for the purpose of considering the question of such transfer, of which not less than fourteen days' notice shall have been given, and at which there shall be present not less than two-thirds of the whole number of such vestry or board, then such powers and duties, and all sewers and property vested in such vestry or board under this Act, for the purposes of or in connexion with such powers and duties, shall, at the expiration of one month after notice from such vestry or board shall have been given under their seal to the said metropolitan board of such resolution having been passed as aforesaid, become vested in the said metropolitan board, and the provisions of this Act for defraying expenses incurred by such board in the execution of this Act shall extend to expenses incurred by them in the execution of the powers and duties so transferred to them.

All powers relating to

90. All the duties, powers, and authorities for or in relation to the paving, lighting, watering, cleansing, or improving of any parish

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or required to be done under the provisions of the Metropolitan Sewers Act. But that cannot be so under this enactment, as it only applies to vestries and district boards, and does not include the metropolitan board.

(*e*) A local board empowered by a local Act to cause offensive ditches at the side of or crossing public roads, &c., to be covered, and to substitute pipe or other drains, were held to have no right to remove posts and rails, and cover a ditch fenced off from the highway; *Tutin* v. *Local Board of West Ham*, 8 Cox. Mag. Ca. 194; 8 L. R. C. P. 447.

(*f*) An interlocutory injunction against the proposed erection of a urinal in Grosvenor Place, adjacent to the wall of Buckingham Palace, was granted by one of the Vice-Chancellors, but dissolved on appeal to the Lords Justices; *Biddulph* v. *Vestry of St. George's Hanover Square*, 33 L. J. Ch. 411.

(*g*) By the 28th section of 25 & 26 Vict. c. 102, *post*, these powers are not to be transferred without the previous consent in writing of the metropolitan board.

Section 90.

paving, &c. to be vested in vestries and in district boards (*a*).

mentioned in schedule (A.) to this Act, or any part of such parish, now vested in any commissioners, or in any body other than the vestry of such parish, or in any officer of any commissioners or other body, and all other duties, powers, and authorities in anywise relating to the regulation, government, or concerns of any such parish or part, or of the inhabitants thereof) except such duties, powers, and authorities as relate to the affairs of the church, or the management or relief of the poor (*b*), or the administration of any money or other property applicable to the relief of the poor, so far as such duties, powers, and authorities relate thereto), now vested under any local Act of parliament (*c*) in any commissioners, or in any body other

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(*a*) By 25 & 26 Vict. c. 102, s. 73, *post*, Appendix, certain provisions of the General Paving Act, 57 Geo. 3, c. 29, are extended to the metropolis. The 25 & 26 Vict. c. 102, s. 101, *post*, enables vestries and district boards to put an end to any powers of appointment of inspectors of weights and measures existing under any local Acts in their parishes or districts. But that section is repealed by the Weights and Measures Act, 1878, and see substituted provision in section 55 of that Act. The 19 & 20 Vict. c. 112, s. 1, *post*, provides, that where the power of making church rates was vested in an open vestry, or in any meeting in the nature of an open vestry meeting, such power shall not be deemed to have become vested in the vestry constituted under this Act, and the second section saves the rights of any such open vestry or meeting to make church rates (see now 31 & 32 Vict. c. 109, for the abolition of compulsory church rates), or other powers vested in them, or any elected or other vestry, when such vestry or meeting acts exclusively in any district created for ecclesiastical purposes. Section 3 of 19 & 20 Vict. c. 112, declares that save as thereinbefore otherwise provided, all the duties, &c. (including such as relate to the affairs of the church, or the management or relief of the poor, &c.), shall be deemed to have become transferred to the vestries, &c., constituted under this Act, &c., except duties and powers relating to the affairs of the church, &c., vested in guardians, governors, &c. See *Carter* v. *Cropley*, cited in note to section 3 of 19 & 20 Vict. c. 112, *post*. The power of making a rate under a local Act for payment of the rector's stipend and other objects, was held to be transferred by this enactment to the vestry under this Act; *R.* v. *Stretfield*, 32 L. J. M. C. 236.

The obligation to light the half of Vauxhall Bridge, in the parish of Lambeth, was decided to have been transferred from commissioners under a local Act to the vestry of Lambeth by this and the 93rd sections; *R.* v. *Vestry of Lambeth*, 3 B. & S. 1.

The description "Tower, District of" in Schedule B. to this Act sufficiently designates the area both of the "Old Tower Without" and "Great Tower Hill," and the powers and obligation to pave Tower Hill were held to be transferred from trustees under a local Act to the Whitechapel District Board; *R.* v. *Trustees of Tower Hill*, 30 J. P. 506 Q. B.

(*b*) See *R.* v. *Local Government Board*, L. R. 9 Q. B. 148, as to compensation to a solicitor who was employed by trustees whose powers, except those relating to the church, &c., were transferred to the vestry under this Act, and was subsequently deprived of his office by the operation of the Metropolitan Poor Act, 1867.

(*c*) See the 247th section, enacting that all Acts of parliament in force in any parish, &c., to which this Act extends, shall, so far as the same are inconsistent with the provisions of this Act, be repealed as regards such parish, &c. See a return made to the House of Commons on the motion of Sir B. Hall, relating to the paving, cleansing, lighting, &c., of each parish and extra-parochial place within the city of Westminster, the borough of Marylebone, &c., and other places included in the weekly bills of mortality; P. P. 127 (ordered to be printed 15th March, 1855.) The return, so far as it extends, shows the parishes to which the Metropolitan General Paving

Section 90.

than the vestry of such parish, or in any such officer, shall cease to be so vested, and shall, save as herein otherwise provided, become vested in and be performed and exercised by the vestry of such parish under this Act; and all the duties, powers, and authorities for or in relation to the paving, lighting, watering, cleansing, or improving of any parish included in any district mentioned in schedule (B.) to this Act, or any part of such parish, now vested in any commissioners, vestry, or other body, or in any officer of any commissioners or other body, and all other duties, powers, and authorities in anywise relating to the regulation, government, or concerns of any such parish, or part, or of the inhabitants thereof (except such duties, powers, and authorities as relate to the affairs of the church, or the management or relief of the poor, or the administration of any money or other property applicable to the relief of the poor, so far as such duties, powers, and authorities relate thereto), now vested under any local Act of parliament in any commissioners, vestry, or other body, or in any such officer, shall cease to be so vested, and shall, save as herein otherwise provided, become vested in and be performed and exercised by the board of works for such district; and the provisions of every such Act of parliament as aforesaid shall be applicable to the vestry of every parish mentioned in the said schedule (A.) and to every such district board accordingly, and the offices of all commissioners and persons whose powers are determined by this Act shall cease and be determined, and there shall be no new appointment or election to any such office.

Saving as to baths and washhouses, metropolitan burials, markets, and charitable trusts Acts.

91. Provided always, that, save as regards the appointment of auditors, nothing in this Act shall divest the vestry of any parish, or any commissioners or burial board appointed by any vestry, of any powers or property vested in them respectively under the provisions of the Act of the session holden in the ninth and tenth years of Her Majesty, chapter seventy-four, or any Act amending the same, or under the provisions of the Act of the session holden in the fifteenth and sixteenth years of Her Majesty, chapter eighty-five, or any Act amending the same, or in anywise affect the provisions of any of the said Acts (*d*); and nothing in this Act shall extend to or affect any rights, privileges, powers, or authorities vested in any persons in reference to any market, or any powers or rights for or in relation to the administration of any charitable trusts, save that any powers or rights in relation to any such trusts vested or which would have become vested in the existing vestry of any parish shall be vested in the vestry of such parish as constituted by this Act.

Expenses incurred under existing powers relating to

92. Provided also, that all expenses of paving, lighting, watering, cleansing, or improving any parish or any part of any parish mentioned in either of the schedules (A.) and (B.) to this Act, and all other expenses in relation to the regulation, government, or public concerns of any such parish or part, or of the inhabitants thereof

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Act, 57 Geo. 3, c. 29, the Lighting and Watching Act, 3 & 4 Will. 4, c. 90 or local Acts apply, and other particulars; and see Index to the public and private statutes, from 41 Geo. 3 to 22 Vict., part 2, containing local and personal, local and private Acts, compiled by order of the select committee on the library of the House of Lords.

(*d*) See 15 & 16 Vict. c. 85, an Act to amend the laws concerning the burial of the dead in the metropolis, amended by 16 & 17 Vict. c. 134, and 20 & 21 Vict. c. 35.

Section 92. paving, &c., to be deemed expenses incurred in execution of this Act.

except only expenses incurred in relation to the affairs of the church, or for the management or relief of the poor, and other expenses by law payable out of any poor rate, which are not herein provided for, shall be deemed expenses incurred in the execution of this Act, and shall be defrayed accordingly (*a*).

As to the transfer of property.

93. All property, matters, and things whatsoever vested in such commissioners or other body, or in any such officer as aforesaid, under any such Act, in connexion with any such duties or powers as aforesaid, hereby transferred to the vestry of any parish or the board of works for any district, shall upon the commencement of this Act be vested in such vestry or board; and where any such property, matters, or things are vested in any such commissioners or body, or officer, acting for parts extending beyond such parish or district, the metropolitan board of works shall by their order declare in what vestry or district board they shall be vested, and may, if they see fit, apportion (*b*) the same between the vestries and district boards within whose respective districts and parishes such parts may be situate, and the same shall be vested accordingly; and any money in the possession of any such commissioners or other body, or any such officer, which becomes vested in any such vestry or board under this enactment, and the income of any other such property, until sold or disposed of, shall be applicable, as nearly as may be, for the like purposes as if this Act had not been passed.

Existing contracts, &c., to remain valid.

94. Provided always, that all contracts (*c*), agreements, bonds, covenants, or securities (*d*) made or entered into with or in favour of or by such commissioners or body, or any person in their behalf, or any such officer as aforesaid, before the commencement of this Act, shall remain as valid and effectual and be proceeded on and enforced as if this Act had not been passed; and no action, suit, prosecution, or proceeding commenced or carried on by or against such commissioners or body or any of them respectively shall abate or be discon-

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(*a*) The provisions for defraying these expenses are contained in the 158th and following sections.

(*b*) It appears by the annual report of the Metropolitan Board of Works, dated the 30th June, 1857, and presented to parliament, that under this provision, and the 180th section, the board had made orders effecting apportionments of assets, debts, and liabilities in the case of the Foundling Estate affecting the parishes of St. Pancras, St. George, Bloomsbury, and St. George the Martyr, and of the Commercial-road trust, in which the parishes and hamlets of St. George the East, Mile-end Old-town, Limehouse, Ratcliff, and Poplar were interested. The apportionments referred to in that report relating to the Ratcliff trust, the Goswell-street trust, the Clapham lighting trust, and the St. George's pavement commission have also since been completed.

(*c*) An action commenced after the Act came into operation, upon a contract for cleansing entered into before its passing with trustees under a local Act for a parish within schedule (B.), was held to be correctly brought against the new body, as the parties having control of the funds ultimately liable to the payment; *Sinnott* v. *The Commissioners for Works for the Whitechapel District*, 27 L. J. C. P. 177. See action on a bond given by the Corporation of London previously to the passing of the Thames Conservancy Act, *Brown* v. *Mayor, &c., of London*, 31 L. J. Ch. 280.

(*d*) See provisions for discharging existing liabilities under Acts relating to paving, &c., section 180, and cases referred to in note to that section.

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tinued or prejudicially affected by this Act, but shall continue and take effect as if this Act had not been passed; and all moneys coming to such commissioners or body under any such contract, agreement, bond, covenant, security, action, suit, or proceeding, and which would have been applicable by them if this Act had not been passed for the purposes of any of the duties or powers hereby transferred to any vestry or district board, shall be paid over to such vestry or board, or as they may direct, and be applied for the like purposes; and all moneys and liabilities which such commissioners or body, or officer, would have been liable to pay or discharge, under any such contract, agreement, bond, covenant, security, action, suit, or proceeding, out of any rates to be levied under any such powers as aforesaid, if this Act had not been passed, and all costs, damages, and expenses which such commissioners or body, or any of them respectively, might, if this Act had not been passed, have legally defrayed out of any such rates, shall be paid out of rates to be levied by such vestry or board as hereinafter provided.

Existing commissioners, &c., under local Acts continued in office until commencement of this Act.

95. Where, under the provisions of any local Act in relation to the paving, lighting, watering, cleansing, or improving of any parish mentioned in either of the schedules (A.) and (B.) to this Act, or any part of any such parish, any election or appointment of any commissioners or persons whose powers are determined by this Act is appointed to take place at any time between the time of the passing of this Act and the time appointed for the commencement thereof, the commissioners or persons now acting under such local Act shall remain in office, and perform and exercise all the duties, powers, and authorities of such Act, until the commencement of this Act, anything in such local Act to the contrary notwithstanding.

Powers and duties of surveyors of highways, and property vested in them, trans-

96. Every vestry and district board shall, within their parish or district (exclusively of any other persons whatsoever), execute the office of and be surveyor of highways, and have all such powers, authorities, and duties, and be subject to all such liabilities as any surveyor of highways in England is now or may hereafter be invested with or liable to by virtue of his office, under the laws for the time being in force (*e*), so far as such powers, authorities, duties, and

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(*e*) See 5 & 6 Will. 4, c. 50, Highway Act, 1835, 4 & 5 Vict. c. 51, 8 & 9 Vict. c. 71, and 13 & 14 Vict. c. 99. The 25 & 26 Vict. c. 61, Highway Act, 1862 (amended by 27 & 28 Vict. c. 101), enacts that there shall not be included in any highway district, in pursuance of that Act, any parish or place within the limits of the metropolis defined by the Metropolis Management Act, 1855. By 41 & 42 Vict. c. 77, Highway and Locomotives (Amendment) Act, 1878, s. 2, the Act shall not, save as thereby expressly provided, apply to any part of the metropolis. The second part of that Act amending the Locomotives Acts, 1861 and 1865, confers powers on the corporation of London and the metropolitan board in relation to locomotives.

A surveyor of highways appointed under 5 & 6 Will. 4, c. 50, was held not liable for damages arising from the non-repair of a highway; *Young* v. *Davis*, 31 L. J. Ex. 250, and as to non-liability of a surveyor of county bridges; *McKinnon* v. *Simon*, 9 Ex. 609.

The common law liability of a parish to repair its highways is not transferred to vestries by the operation of this Act, and no action lies against a vestry for damage arising from the non-repair of a highway; *Parsons* v. *Vestry of Bethnal Green*, 37 L. J. C. P. 62, in accordance with *Young* v.

Section 96. liabilities are not inconsistent with this Act; but all expenses which under any such law ought to be defrayed by highway rates shall be defrayed by means of the rates to be raised under this Act, and all moneys which would be applicable in aid of such highway rates

ferred to vestries and district boards.

Davis, supra. Nor against a local board constituted by the Public Health Act; *Gibson* v. *Mayor of Preston*, L. R. 5 Q. B. 218, and see *White* v. *Local Board of Hindley*, L. R. 10 Q. B. 219. There is no liability on a vestry under this Act for *nonfeasance*, per *Lush*, J., in *Guardians of Holborn Union* v. *St. Leonard's Shoreditch*, 41 J. P. 38.

But a local board are liable for damage caused by the negligence of one of their servants; *Foreman* v. *Mayor of Canterbury*, 40 L. J. Q. B. 138; L. R. 6 Q. B. 214, contrary to *Holliday* v. *Vestry of St. Leonard Shoreditch*, 30 L. J. C. P. 361, which decision was said by *Blackburn*, J., to have been virtually overruled since the case of the *Mersey Docks Co.* v. *Penhallow*, L. R. 1 E. & Ir. App. 93, where it was held on appeal from the Ex. Ch. that trustees empowered by statute to levy tolls, but not deriving any personal benefit are liable in their corporate capacity for damage occasioned by the default of their servants; *Parnaby* v. *Lancaster Canal Co.*, 11 A. & E. 223, approved of. Certain observations of *Lord Cottenham* in *Duncan* v. *Findlater*, 6 Cl. & F. 894, were dissented from. So also drainage commissioners, bound to maintain a sluice, were held not exempted from liability for the negligent performance of that duty by their servants, by reason of their being commissioners for public purposes; *Coe* v. *Wise*, L. R. 1 Q. B. 711. And a body empowered to maintain a towing path and take tolls for the benefit of the public only, were held liable for damage caused by the neglect of that duty; *Winch* v. *Conservators of Thames*, 41 L. J. C. P. 241. And see action for damage from non-repair of a footpath against the commissioners under a Local Improvement Act incorporating Towns Improvement Clauses Act, 1847, and thereby made liable to an indictment for neglect; *Hartnell* v. *Ryde Improvement Commissioners*, 4 B. & S. 361. A local board of health, were held liable for damage arising from the non-repair of a grid part of a sewer, not as surveyors of highways but as owners of the grid; *White* v. *Hindley Local Board*, L. R. 10 Q. B. 219. And see *Smith* v. *West Derby Local Board*, L. R. 3 C. P. D. (C.A.) 423, where a local board of health surveyors of highway, and a sewer authority employed a contractor to construct a pipe sewer under a highway, under the superintendence of their surveyor, and the plaintiff's horse was damaged by subsequent subsidence, the board was held liable in an action on the ground that the evidence showed that the work was improperly constructed; and as to liability for damage from neglect of the duty to fence footpaths imposed by the Towns Improvement Clauses Act, 1847; *Ohrby* v. *Ryde Commissioners*, 33 L. J. Q. B. 296.

See order of a police magistrate to repair a bridge on the expiration of a turnpike trust; *London Chatham and Dover Railway Co.* v. *Wandsworth District Board of Works*, 42 L. J. M. C. 70.

Where a surveyor of highways, appointed by a vestry, lets the work to a contractor and does not personally interfere, he is not responsible for damage occasioned by the negligence of the contractor; *Taylor* v. *Greenhalgh*, L. R. 9 Q. B. 487, but otherwise where he contracts for part of the work only; *Pindlebury* v. *Greenhalgh* (on appeal from Q. B.), L. R. 1 C. A. 37; and see *Reid* v. *Darlington Highway Board*, 41 J. P. 581 Q. B.

Where a work is in course of execution from which danger may arise to others, the party ordering the work is bound to take measures for preventing damage to others, and he cannot divest himself of his liability by transferring the duty to a contractor; *Gray* v. *Pullen*, 5 B. & S. 970, 981, and see *Bower* v. *Peate*, 40 J. P. 789, and *Pickard* v. *Smith*, 10 C. B. (N.S.) 470. Where it is said that "if an independent contractor is employed to do a lawful act; and in the course of his work he or his servants commit some casual act of wrong or negligence, the principal is not liable, but in this

shall be applied in aid of the said rates to be raised under this Act, and no such vestry or board shall be subject to any provisions con- Section 96.

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case the act occasioning the injury is one which the contractor was employed to do." See observations of *Field*, J., in *Bower* v. *Peate supra*.

See action against a surveyor of a highway board committing a trespass by order of the board on a disputed highway; *Mill* v. *Hawker*, 10 Cox. Mag. Ca. 147; 43 L J. Ex. 129; 44 L. J. Ex. 49.

In a certificate of justices for stopping up a highway within the metropolis under the General Highway Act, the justices are not called upon to state any of the preliminary matters required by section 84 of the Act; *Harvey* v. *Vestry of Bethnal Green*, 39 J. P. 262, and see observation of Mr. Justice *Blackburn*, that he did not proceed on the ground of any distinction between a country and a metropolitan vestry.

A parish was held not liable to be convicted on an indictment for the non-repair of a sea wall washed away by the sea over which there was an alleged road; *R.* v. *St. Paul*, 2 M. & R. 307, and see *R.* v. *Severn and Wye Railway Co.*, 2 B. & A. 646.

A landslip from the encroachment of the sea was determined to be not such a destruction of the highway as to exempt the parish from its liability to repair; *R.* v. *Greenhow*, L. R. 1 Q. B. 703; as to implied extinction of right of way by statute, refer to *Corporation of Yarmouth* v. *Simmons*, L. R. 10 Ch. D. 511.

A metropolitan vestry was held liable to repair the flagstones forming the covering of a cellar and used for passage by the public; *Hamilton* v. *Vestry St. George's Hanover Square*, 43 L. J. M. C. 41.

Where access to a road at either end was impossible in consequence of roads leading to it having been legally stopped up, it ceases to be a highway; *Bailey* v. *Jamieson*, L. R. 1 C. P. D. 329.

The public have a *primâ facie* right of passage over the whole road; *R.* v. *Electric Telegraph Co.*, 31 L. J. M. C. 166.

But there may be a partial dedication of a way; *Le Neve* v. *Vestry of Mile End Old Town*, 27 L. J. Q. B. 208, and see *Fisher* v. *Prowse*, 31 L. J. Q. B. 212. There cannot be a qualified dedication subject to the power of resumption; *Barraclough* v. *Sheppard*, 8 A. & E. 99. There may be a dedication of a road for a limited purpose, but not for a limited portion of the public; *Poole* v. *Huskinson*, 11 M. & W. 827, and see *Vestry of Bermondsey* v. *Brown*, L. R. 1 Eq. 204; 30 J. P. 118.

The same evidence of user will raise the presumption of a right of way for the public along a river wall, as in every other case of uninterrupted user; *District Board of Greenwich* v. *Maudslay*, L. R. 5 Q. B. 397.

Where the owner and occupier of premises conveyed goods therefrom across a flagged foot pavement and crushed the paving stones, he could not under the circumstances be convicted under 5 & 6 Will. 4, c. 52, s. 72, for a nuisance, as the owner of land dedicated to the public may enjoy all rights consistent with the dedication; *Vestry of Newington* v. *Jacobs*, 41 L. J. M. C. 72.

It is a nuisance to plough up a common footpath; *R.* v. *Cross*, 3 Campb. 226, but there may be a qualified dedication of a way subject to such right; *Mercer* v. *Woodgate*, 39 L. J. M. C. 21.

See presumption of a dedication of a street subject to the right of having a cellar flap in it; *Fisher* v. *Prowse*, 2 B. & S. 770, and a right of occupier to have steps leading to his house; *Cooper* v. *Walker*, *ibid.*, and see *Robbins* v. *Jones*, 15 C. B. (N.S.) 221; as to a right of way across a field subject to the right of ploughing it up periodically, see *Mercer* v. *Woodgate*, *supra*, *Arnold* v. *Blackett*, L. R. 6 Q. B. 433, and refer to *Arnold* v. *Holbrook*, L. R. 8 Q. B. 96; *Brackenbury* v. *Thoresby*, 33 J. P. 565, and *Rankin* v. *Forbes*, 34 J. P.

In *Gerring* v. *Barker*, 28 J. P. 615, it was held that there was no evidence of user justifying an innkeeper in putting vehicles on market days on ground forming part of a highway.

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cerning the accounts of surveyors of highways, or requiring any returns to be made to any special sessions; and all streets being highways (*a*), and the pavements, stones, and other materials thereof, and all other things provided for the purposes thereof by any surveyor of highways, or by any person serving the office of surveyor of highways, or by any vestry or district board under this Act, shall vest in (*b*) and be under the management and control of the vestry or district board of the parish or district in which such highways are situate.

Although there is no common law right of towing along the bank of a navigable river, there may be a limited dedication to the public for that purpose; *Winch* v. *Thames Conservators*, 41 L. J. C. P. 241.

(*a*) A street which has been dedicated and used, but has not been repairable by the parish in manner provided by 5 & 6 Will. 4, c. 50, may nevertheless still be a highway; *Roberts* v. *Hurst*, 15 Q. B. 17; and see *R.* v. *Dayman*, 26 L. J. M. C. 129.

(*b*) Where a railway company was empowered for public convenience to widen a bridge over a lane, but their compulsory powers had expired, the Court of Chancery refused to interfere by injunction at the instance of the district board; for though the soil of the lane was said to be vested in the board, it was for the convenience of the public, and the inconvenience to the public from the works would be little or none; *Board of Works of Wandsworth District* v. *London and South Western Railway Co.*, 8 Jur. (N.S.) 691. Ordinarily the freehold of the highway belongs to the owner of the freehold of the soil; *Sir John Lade* v. *Shepherd*, 2 Str. 1004, who is entitled to all trees upon it and mines under it; 1 Burr. 143; and may bring trespass or ejectment; *Stevens* v. *Whistler*, 11 East. 51; and ordinarily the soil of a turnpike road does not vest in turnpike trustees; *Davison* v. *Gill*, 1 East. 69. The owner of the soil of a public way was held entitled to an injunction to restrain a stranger from laying down pipes there; *Goodson* v *Richardson*, L. R. 9 Ch. 221.

The right of the owner of land abutting on a highway *ad medium filum viæ*, is founded on a presumption existing only in the absence of evidence of actual ownership; *Beckett* v. *Corporation of Leeds*, L. R. 7 Ch. 421.

The meaning of the word "vested" in a sanitary provision under the Public Health Act came under the incidental notice of the Master of the Rolls in *Bagshaw* v. *Buxton Local Board of Health*, L. R. 1 Ch. D. 220, where he uses the expression "vested *sub modo*, not giving the highway board necessarily a right to the soil." But it was decided in *Coverdale* v. *Charlton*, L. R. 3 Q. B. D. 376, that the "vesting" meant by the 149th section of the Public Health Act, 1875, was an actual vesting of the property in the lane, not merely of user and control for highway purposes, and see cases referred to in note to sections 68, 69, *ante*. See case of *Coverdale* v. *Charlton* (affirmed on appeal), 43 J. P. 268, and observations of Lord Justices *Bramwell* and *Brett*, to the effect that the "vesting" meant is for the purpose of doing what is usually and necessarily done underneath a street. A wall was held an obstruction within the meaning of the Towns Improvement Clauses Act, 1867, sections 69, 70, whatever the width of the unenclosed part, and the High Court of Justice had jurisdiction to determine whether the ground on which the wall stood was or was not part of the highway; and see observations of the Master of the Rolls as to the rights of surveyors and others for the prevention of nuisances; *Bagshaw* v. *Buxton Local Board of Health*, L. R., Ch. D. 229. The Highways and Locomotives (Amendment) Act, 1878, section 27, enacts that notwithstanding anything in the Public Health Acts, 1848 and 1875, all mines and minerals of any description whatsoever under any disturnpiked road or highway which has or shall become vested in an urban sanitary authority by virtue of the sections referred to shall belong to the person who would be entitled thereto in case such road or highway had not become so vested.

A conviction under the 69th section of 5 & 6 Will. 4, c. 50, was held a

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Provision as to rates already made in parishes mentioned in schedule (A.)

97. Provided always, that all rates made previously to the commencement of this Act for defraying the expenses of executing any duties, powers, and authorities hereby transferred to any vestry or district board, and all highway rates made previously to such commencement, or so much of such respective rates as may not have been levied and paid, shall be levied and collected as if this Act had not been passed (*c*), and, subject to the payment or retainer thereout of any sum or expenses lawfully payable out of such respective rates, shall, where such rates are levied in a parish mentioned in schedule (A.) to this Act, be accounted for and paid over to the vestry of such parish, and shall, where levied in any other parish, be accounted for and paid over to the board of works for the district in which such parish is comprised, and shall in every case be applied in aid of the rates to be raised for the like purposes under this Act in the particular parish or part in which the said rates so made previously to the commencement of this Act are levied.

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defence to a surveyor's pulling down a house pursuant to it, although the conviction was wrongful; *Keane* v. *Reynolds*, 2 E. & B. 748.

It was decided in *Denny* v. *Thwaites*, L. R. 2 Ex. D. (C.A.) 21, that a highway surveyor *bonâ fide* taking up drain pipes was not guilty of malicious damage under 24 & 25 Vict. c. 97, s. 52.

As to driving cattle through the streets on a Sunday in alleged contravention of a local Act for the parish of Islington, see *Triggs* v. *Lester*, 30 J. P. 228.

In a proceeding for a penalty for encroachment on a highway by a building contrary to the 51st section of 27 & 28 Vict. c. 101, the six month's limitation in Jervis' Act runs from the completion of the building; *Coggins* v. *Bennett*, L. R. 2 C. P. D. 568. The term "owner" as employed in section 65 of Highway Act, 1835, means the actual occupier of the land whether he be the owner or merely tenant from year to year; *Woodard* v. *Billericay Highway Board*, 43 J. P. 224.

To maintain an action for the obstruction of a highway, the plaintiff must have sustained thereby a special damage apart from the rest of the public; *Winterbottom* v. *Earl of Derby*, 31 J. P. 568, 36 L. J. 194, and 870, *Benjamin* v. *Storr*, 43 L. J. C. P. 162; *Bateman* v. *Bluck*, 18 Q. B., and see *Mayor of Colchester* v. *Brooke*, 7 Q. B. 339.

It is an indictable nuisance to dig trenches in a highway without parliamentary power; *R.* v. *Langton Gas Co.*, 2 E. & E. 651, and see *R.* v. *Train*, 2 B. & S. 640; *R.* v. *Electric Telegraph Co.*, 31 L. J. M. C. 166. An injunction to restrain a borough corporation from excavating a parish road in order to lay down sewers was refused; *Taylor* v. *Corporation of Oldham*, L. R. 4 Ch. D. 200. A license by a local board to repair a highway in consideration of an annual payment was held valid; *Edgeware Highway Board* v. *Harrow Gas Co.*, 44 L. J. Q. B. 1.

There cannot be a legal custom to put up stalls for the sale of refreshments on a highway at statute sessions, and the person erecting such is liable to be convicted under the 72nd section of General Highway Act; *Simpson* v. *Webb*, 41 L. J. M. C. 105.

Where the jury found an encroachment on a highway to be inappreciable, a verdict of not guilty was held justifiable; *R.* v. *Lepine*, 33 J. P. 723. Letting trees grow over a highway causing obstruction held not a wilfully obstructing under section 72 of General Highway Act; *Walker* v. *Horner*, L. R. 1 Q. B. D. 4; and as to rain drip from eaves; see *Crossdill* v. *Ratcliff*, 26 J. P. 807 See 25 & 26 Vict. c. 102, s. 71, *post*, as to transfer of property of surveyors of highways to vestries and district boards, and as to payment to them of income of estates subject to trusts for repair of highways.

(*c*) The arrears must be collected by the new vestry; *R.* v. *Ingham*, 20 J. P. 772.

Section 98.

Vestry or district board to cause streets to be paved.

98. It shall be lawful for every vestry and district board from time to time to cause all or any of the streets (*a*) within their parish or district, or any part thereof respectively, to be paved (*b*) or repaired when and as often and in such form and manner and with such materials as such vestry or board think fit, and to cause the ground or soil thereof to be raised or lowered, and the course of the channels running in, into, or through the same to be turned or altered, in such manner as they think proper, and to alter the position of any mains or pipes (*c*) in or under such street, such alteration to be made subject to the approval of the engineer of the company to which such mains or pipes belong.

Owners possessing freehold of courts, &c. to pave the same.

99. Provided always, that whenever the freehold of any court, passage, or public place, not being a thoroughfare, is vested in the owner of any adjoining house, the paving of such court, passage, or public place shall be done by such owner, if deemed expedient or necessary by the vestry or district board (*d*).

Owner of courts to drain them, and keep the pavement, &c., in repair.

100. The owner of any such court, passage, or public place, not being a thoroughfare (*e*), shall, if required by the vestry or district board of the parish or district in which the same is situate, to the satisfaction of such vestry or district board sufficiently pave, cover the surface of, or repair the same, and lay, at a proper level, through, over, under, or along such part thereof as such vestry or board may require, a drain, channel, or gutter, and keep such pavement or covering, and drain, channel, or gutter, in good repair, to the satisfaction of such vestry or board; and if any such owner of any court, passage, or public place, not being a thoroughfare, do not sufficiently pave or cover the same as aforesaid, or do not lay down therein such drain, channel, or gutter, or do not repair the same respectively, to the satisfaction of such vestry or board, within 14 days after notice in writing requiring him so to do has been given to him by such vestry or board, every such person so offending shall forfeit and pay any sum not exceeding £5 (*f*).

Penalty on owners for neglect.

Vaults and cellars under streets not to

101. No vault, arch, or cellar shall be made under any street without the consent of the vestry or district board of the parish or district in which the same is situate; and all such vaults, arches, and

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(*a*) By section 250 the word "street" is not to include the carriage-way of any turnpike road. The 244th section places the footpaths of turnpike roads under the management of vestries and district boards.

(*b*) By section 112 of 25 & 26 Vict. c. 102, *post*, the word "pave" includes the formation of the roadway or footway of any street. See, as to the extent of the powers given to vestries, &c., by this section, *R.* v. *Train and others*, 31 L. J. M. C. 169. Laying down a tramway is not a mode of paving within this section, *Ibid.*

(*c*) See regulations as to the breaking up of pavements by companies, section 109, *et seq.*

(*d*) See the 78th section of 25 & 26 Vict. c. 102, *post*, as to flagging footways at the cost of the occupiers of property abutting on or next to such footways; and section 77 of 25 & 26 Vict. c. 102, as to paving new streets at cost of owners.

(*e*) A road may be a highway, though not a thoroughfare, *Bateman* v. *Bluck*, 21 L. J. Q. B. 406.

(*f*) 25 & 26 Vict. c. 102, s. 81, *post*, enables the vestry, &c., in lieu of enforcing the penalty, to execute the works and recover the expenses from the owner.

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cellars hereafter to be made within any parish or district mentioned in either of the schedules (A.) and (B.) to this Act shall be substantially made, and so as not to interfere or communicate with any drain or sewer under the control of any vestry or district board, or of the metropolitan board of works, without their consents respectively first obtained; and if any vault, arch, or cellar be made contrary to this provision, it shall be lawful for the vestry or district board, or for the metropolitan board of works, to fill up or alter the same, and the expenses incurred thereby shall be paid by the owner of such vault, arch, or cellar.

be made without the consent of the vestry or board (*g*).

102. All vaults, arches, and cellars made either before or after the commencement of this Act under any street in any parish or district mentioned in either of the schedules (A.) and (B.) to this Act, and all openings into the same in any such street, shall be repaired and kept in proper order by the owners or occupiers of the houses or buildings to which the same respectively belong; and in case any such vault, arch, or cellar be at any time out of repair, it shall be lawful for the vestry or district board of such parish or district to cause the same to be repaired and put into good order, and to recover the expenses thereof from such owner in the manner hereinafter provided (*h*).

Vaults, &c., under streets to be repaired by owners or occupiers.

103. Any room of a house the surface of the floor of which room is more than three feet below the surface of the footway of the adjoining street, and any cellar where such room or cellar is or has been occupied separately as a dwelling at or before the time of the passing of this Act, may continue to be so let or occupied if it possess the following requisites; that is to say,

Provisions as to the occupation of underground rooms as dwellings (*i*).

If there be an area not less than three feet wide in every part from six inches below the floor of such room or cellar to the surface or level of the ground adjoining to the front, back, or external side thereof, and extending the full length of such side;

If such area, to the extent of at least five feet long and two feet six inches wide, be in front of the window of such room or cellar, and be opened or covered only with open iron gratings;

If there be in every such room or cellar an open fireplace, with proper flue therefrom;

If there be a window opening of at least nine superficial feet in area, which window opening must be fitted with a frame filled in with glazed sashes, of which at the least four and a half superficial feet must be made to open for ventilation:

And no such room nor any cellar not so let or occupied as aforesaid

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(*g*) See note to section 211 as to appeal against proceedings of vestries under this provision.

(*h*) As to recovery of expenses, see sections 225, 226. This provision applies only to cellars which are a complete construction in themselves, arched over and with roofs independent of the pavement; *Hamilton* v. *Vestry of St. George's, Hanover Square*, L. R. 9 Q. B. 42. This section does not make a landlord liable for an accident from a defective cellar-plate where the obligation to repair is by a lease cast upon the tenant.

(*i*) The 23rd section of the Metropolitan Building Act, 18 & 19 Vict. c. 122, *post*, Appendix, lays down rules for the construction of habitable rooms hereafter constructed; and the 3rd rule makes reference to the present provision. See penalties imposed by that section.

Section 103. at or before the time of the passing of this Act shall be so let or occupied unless it possesses the following requisites; that is to say,

Unless the same be in every part thereof at least seven feet in height, measured from the floor to the ceiling thereof;

Unless the same be at least one foot of its height above the surface of the footway of the street adjoining or nearest to the same;

Unless there be outside of and adjoining the same room or cellar, and extending along the entire frontage thereof and upwards, from six inches below the level of the floor thereof up to the surface of the said footway, an open area at least three feet wide in every part;

Unless the same be effectually drained and secured against the rise of effluvia from any sewer or drain;

Unless there be appurtenant to such room or cellar the use of a watercloset or privy, and an ashpit, furnished with proper doors and coverings kept and provided according to the provisions of this Act;

Unless the same have a fireplace with a proper chimney or flue;

Unless the same have an external glazed window of at least nine superficial feet in area clear of the frame, and made to open in such manner as is approved by the surveyor of the metropolitan board of works:

Provided always, that in any area adjoining a room or cellar there may be placed steps necessary for access to such room or cellar, and over or across any such area there may be steps necessary for acccess to any building above the room or cellar to which such area adjoins, if the steps in such respective cases be so placed as not to be over or across any such external window:

And whosoever lets, occupies, or continues to let, or knowingly suffers to be occupied, any room or cellar contrary to this Act, shall be liable for every such offence to a penalty not exceeding 20*s.* for every day during which the same continues to be so let or occupied; and every room or cellar in which any person passes the night shall be deemed to be occupied as a dwelling within the meaning of this Act: and every district surveyor acting under the Act of the session holden in the seventh and eighth years of Her Majesty, chapter eighty-four, or under any Act repealing or amending the same, shall, without any fee or reward, report (*a*) periodically, and otherwise, as the said metropolitan board may order, to such board all cases in which rooms or cellars are occupied contrary to this enactment in the district of such surveyor, and also to the respective vestries and district boards all such cases occurring within such parts of his district as may be within their respective parishes and districts; but nothing herein contained shall be construed to disable other persons from enforcing this enactment, and taking proceedings for penalties thereunder.

Power to district surveyors to enter underground rooms and cellars.

104. For the purpose of enforcing the enactment lastly hereinbefore contained it shall be lawful for any such district surveyor, or for any other person, having reasonable grounds for believing that any room or cellar is occupied contrary to such enactment, to demand

(*a*) See now section 62 of 25 & 26 Vict. c. 102, *post*, as to reports of district surveyors on underground rooms or cellars occupied as dwellings, not built or constructed in conformity with the rules contained in this section, and as to proof of such occupation.

admission to inspect the same at any time between nine o'clock in the morning and six o'clock in the evening; and if admission be not granted, any justice having jurisdiction in the place where such room or cellar is situate may, on oath before him of belief that such room or cellar is occupied contrary to the said enactment, by order under his hand authorize such district surveyor or other person to enter into and inspect such room or cellar between the hours aforesaid.

Section 104.

If admission refused, justice may issue an order (*b*).

105. In case the owners of the houses (*c*) forming the greater part of any new street (*d*) laid out or made, or hereafter to be laid out or

Provisions for paving new streeets.

(*b*) Where justices declined to make an order of entry on lands, under Public Health Act, 1875, s. 305, held they had no power to state a case under 20 & 21 Vict. c. 43; *District Sanitary Authorities* v. *Aldrich*, 41 J. P. 549.

(*c*) By the 77th section of 25 & 26 Vict. c. 102, *post*, owners of land are made liable to contribute to the expenses mentioned in this section.

It will be convenient to set out the section here, and at the same time to refer to the cases which have arisen under it. It is in the following terms:—

"Where any vestry or district board shall, under the powers given by section 105 of the firstly-recited Act, have paved or be about to pave any new street, the owners of the land bounding or abutting on such street shall be liable to contribute to the expenses or estimated expenses of paving the same, as well as the owners of houses therein, provided that it shall be lawful for the vestry or district board to charge the owners of land in a less proportion than the owners of house property, should they deem it just and expedient so to do; and any such cost or expenses, including the cost of paving at the points of intersection of streets and all other incidental costs and charges, shall be apportioned by the vestry or board, and shall be recoverable either before the work shall be commenced, or during its progress, or after its completion; and it shall be lawful for the vestry or district board at their discretion to accept payment of the amount apportioned or charged in respect of each house or premises by instalments spread over a period not exceeding twenty years, and any such amount shall be recoverable from the present or any future owner of the premises, either by action at law, or in a summary manner before a justice of the peace, at the option of the vestry or board."

(*d*) By 25 & 26 Vict. c. 102, s. 112, *post*, the expression "new street" includes all streets hereafter to be formed or laid out, and a part of any such street, and also all streets, the maintenance of the paving and roadway whereof had not, previously to the passing of this Act, been taken into charge and repaired by the commissioners, trustees, surveyors, or other authorities having control of the pavements or highways in the parish or place in which such streets are situate, and a part of any such street and also all streets partly formed or laid out. The liability to the expenses of paving new streets is by this the 105th section cast upon the owners of the houses *forming* such street, &c.; and by the 77th section of the Amending Act, the liability is extended to the "owners of the land *bounding or abutting* on such street." The language of the 150th section of the Public Health Act, 1875, describes the parties to whom notice is to be given as "the owners or occupiers of the premises *fronting, adjoining, or abutting* on private streets," and the decisions on that provision threw light upon the enactments under consideration, and are referred to here.

Where a police magistrate dismissed a summons for a share of the expense of paving a new street, on the ground that the street having been dedicated to the public before the Act, was not a "new street" within its meaning, the court (*dissentiente* Erle, J.) held that there had been a hearing and adjudication; *R.* v. *Dayman*, 26 L. J. M. C. 128.

Whether a street is a new street or not is a matter of fact for the justice to determine; *Bowles* v. *St. Mary's, Islington*, 39 J. P., 757.

Section 105. made, which is not paved (*a*) to the satisfaction of the vestry or district board of the parish or district in which such street is situate, be desirous of having the same paved, as hereinafter mentioned, or if such vestry or board deem it necessary or expedient that the same should be so paved, then and in either of such cases such vestry or board shall well and sufficiently pave the same, either throughout the whole breadth of the carriageway and footpaths thereof, or any part of such breadth, and from time to time keep such pavement in good and sufficient repair (*b*) ; and the owners (*c*) of the houses (*d*) forming such street shall, on demand, pay to such vestry or board the amount

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A country lane repaired by the parish time out of mind becomes a "new street" within the Metropolis Management Acts, when houses are built on the sides of the lane; and the words "land bounding or abutting on such street" include the soil of private roads leading out of a new street; *Pound* v. *Plumstead Board of Works*; *Lord Northbrook* v. *Plumstead Board of Works*, L. R. 7, Q. B. 183.

And the expression "new street" is not *confined to streets dedicated* to the public; therefore, where the vestry paved the carriage-way of a road which had not been dedicated, the owners of the houses on either side were held liable to the expenses as it was a new street within section 112 of the Amending Act, 1862; *Vestry of Islington* v. *Barrett* L. R. 9, Q. B. 278.

A bridge over a railway was decided to be a new street within the Metropolis Management Acts; *North London Railway Company* v. *Islington Vestry*, 8 Cox Mag. Ca. 35.

Where houses in a yard communicating by a gateway with a street abutted on houses in the street, they were decided to be situate in the street and liable to a paving rate ; *Baddeley* v. *Gingell*, 1 Ex. R. 319 ; and see *School Board of London* v. *Islington Vestry*, L. R. 1 Q. B. D. 55.

Premises divided from a road not being a highway by a small stream, held under the Public Health Act, 1848, to be fronting and abutting on a street; *Wakefield Local Board of Health* v. *Lee*, L. R. 1 Ex. D. (C.A.) 336.

In a proceeding before justices, taken to recover expenses of paving under the Public Health Act, it was held competent for the owner to show that the street was a highway, repairable by the parish; *Hesketh* v. *Local Board of Health of Atherton*, L. R. 9 Q. B. 4; and see *R.* v. *Livesey*, 20 L. T. (N.S.) 470; and *Nisbett* v. *Greenwich District Board*, 39 J. P. 582.

(*a*) See definition of "pave," 25 & 26 Vict. c. 102, s. 112.

(*b*) Subsequent repairs to a road must be done at the expense of the vestry, whether it has become a highway or not; *R.* v. *Hackney District Board*, L. R. 8 Q. B. 528.

Where the cost of paving a new street had been charged on the general rate, the court ordered the board to restore the amount to the general rate and levy it on owners of house and lands adjoining; *Attorney-General* v. *Wandsworth District Board*, L. R. 6 Ch. D. 539; and see *Dryden* v. *Overseers of Putney*, L. R. 1 Ex. D., (C. A.) 223.

(*c*) A trustee of a school for poor children was held liable to the expense of paving, &c., a private street as owner under Public Health Act, 1848; *Bowditch* v. *Wakefield Board of Health*, L. R. 6 Q. B. 567.

As to liability of owners of premises abutting on a lane not a thoroughfare used for many years as an access to houses; *Dodd* v. *Vestry of St. Pancras*, 34 J. P. 517.

Where certain land belonging to a railway company, including the slope of an embankment, abutted on a new street paved by the vestry, the railway company were held liable to contribute to the paving as owners of "land;" *Higgins* v. *Harding*, L. R. 8 Q. B. 7.

A church built on land conveyed to commissioners for building additional churches, is neither a house nor land under this or the 77th section of the

of the estimated expenses of providing and laying such pavement (such amount to be determined by the surveyor for the time being of the vestry or board) (*e*); and in case such estimated expenses exceed the actual expenses of such paving, then the difference between such

Section 105.

Metropolis Management Amendment Act, 1862; *Angell* v. *Vestry of Paddington*, L. R. 3 Q. B. 714.

As to non-liability to these expenses of the owner in fee of land let for building purposes within this and the Metropolis Management Amendment Act, 1862; see *Lady Holland* v. *Kensington Vestry*, L. R. 2 C. P. 565.

Where the owners of land sold for building purposes, made roads across them, and dedicated them to the public, they were held improperly charged with the expense of paving them, as they were not "owners" within these Acts; *Plumstead Board of Works* v. *British Land Company*, L. R. 10 Q. B. 203, reversing the judgment of the Q. B. and *Northbrook* v. *Plumstead*, *supra*, was distinguished.

The vestry are the sole judges of the expediency of paving a new street, and the apportionment of their surveyor cannot be questioned before the magistrate; *Vestry of Chelsea* v. *Evans*, 34 J. P. 404; *Nesbitt* v. *District Board of Greenwich*, L. R 10 Q. B. 465.

An apportionment of the expenses on the owners of the houses on one side only of the street is bad; *Vestry of Mile End* v. *Guardians of Whitechapel Union*, L. R. 1 Q. B. D. (C.A.) 680.

Where a district board resolved that a whole road should be repaired, and the work was executed in sections, and the expenses were divided amongst the owners of the sections separately, the apportionment was held invalid; *Whitchurch* v. *Fulham District Board*, L. R. 1 Q. B. 233.

As to what are lawful expenses, refer to *Poplar District Board* v. *Love*, 8 Cox Mag. Ca. 399.

As to apportionment of expenses for paving a street under the Public Health Act, 1848, according to frontage; *R.* v. *Newport Board of Health*, 3 B. & S. 341.

Where a local board of health failed to recover the expenses of sewering, paving, &c., private streets, from the owners of the property benefited, the contractor executing the works was held entitled to recover them from the board; *Worthington* v. *Local Board of Mosside*, 2 B & S 508.

Where an apportionment by a surveyor of the expenses of paving, &c., was a nullity, it was held he might make a second apportionment; *Cook* v. *Ipswich Local Board*, L. R. 6 Q. B. 451.

Covenant by tenant to pay expenses of paving new street; *Thompson* v. *Lapworth*, L. R. 3 C. P. 149.

The apportionment of expenses apportioned under section 77 of the Metropolis Management Amendment Act, 1862, may be recovered from the future owner of the premises in respect of which they are assessed, although there was no arrangement to pay by instalments; *Plumstead Board of Works* v. *Ingoldby*, L. R. 8 Ex. (Ex. Ch.) 63, 174,

A judgment recovered by a vestry against a former owner of premises for these expenses remaining unsatisfied, is no answer to an action for the same expenses against the tenant of a succeeding owner; *Vestry of Bermondsey* v. *Ramsey*, L. R. 6 C. P. 247.

(*d*) The 77th section of 25 & 26 Vict. c. 102, *post*, makes owners of *land* liable to contribute to these expenses, and contains provisions for apportioning expenses and accepting payment by instalments.

(*e*) It was decided before the Metropolis Local Management Amendment, Act, 1862, that no action lay at the suit of the vestry against an owner for the amount of these expenses, and they could only be recovered by a proceeding before justices, under the 225th section; *Vestry of St. Pancras* v. *Battenbury*, 26 L. J. C. P. 243. See now section 77 of the Act of 1862, *post*.

Section 105. estimated expenses and such actual expenses shall be repaid by the said vestry or board to the owners of houses by whom the said sum of money has been paid; and in case the said estimated expenses be less than the actual expenses of such paving, then the owners of the said houses shall, on demand, pay to the said vestry or board such further sum of money as, together with the sum already paid, amounts to such actual expenses.

Vestry or board may declare their intention of repairing any street, not being a highway (*a*).

106. The vestry or district board of any parish or district may, if they think fit, by notice in writing put up in any part of any street in their parish or district, not being a highway, declare their intention of repairing the same under this Act, and thereupon the same shall be from time to time repaired by them under the authority of this Act: Provided (*b*) always, that no street shall be repaired as last aforesaid unless such notice in writing be also given to all persons interested in such street, or if within one month after notice in writing has been put up or given, as last aforesaid, any person interested in such street, or the person representing or entitled to represent any person interested as aforesaid, by notice in writing to the vestry or board object thereto.

Act not to authorize the making any thoroughfore without the consent of the proprietor of the estate.

107. Nothing in this Act shall extend or be construed to extend to authorize the taking down or removing any bar, gate, rail, or other fence fixed for preventing any throroughfare into or from any square, street, or way, without the consent of the proprietor of the estate or property upon which such bar, gate, rail, or other fence, square, street, or way shall be situate.

Vestries and district boards may place fences, &c., to footways (*c*).

108. It shall be lawful for every vestry and district board, from time to time, to place any posts, fences, and rails on the sides of any footways or carriageways in their parish or district, for the purposes of safety, and to prevent any carriage or cattle from going on the same, and also to place any posts or other erections in any carriageways so as to make the crossings thereof less dangerous for foot-passengers, and also from time to time to repair and renew any such posts, rails, or fences, or to remove the same, or any other obstruction or encroachment on any carriageway or footway.

(*a*) Where a vestry gave notice of their intention to repair a street not a highway under this (the 106th) section, and afterwards resolved to pave it under section 105, and the expenses were apportioned among the owners of houses, it was decided that the vestry were not precluded from proceeding under the second resolution, and executing the paving before the general repairs; *Vestry of St. George, Southwark* v. *Pethebridge*, 31 J. P. 279 and that it was not necessary to revoke the first resolution; *Ibid.*

Where a local board were authorized to recover expenses either summarily or in the county court, the six months limitation was held to apply to either proceeding; *West Ham Local Board* v. *Maddams*, 40 J. P. 470; see also *Tottenham Local Board* v. *Rowell*, L. R. 1 Ex. D. 514.

(*b*) This proviso is repealed by the 80th section of 25 & 26 Vict. c. 102, *post*, which introduces new provisions as to the repair of streets not being highways.

(*c*) By section 58 of 57 Geo. 3, c. 29, the commissioners or trustees are empowered to erect posts of wood, stone, or iron, for the preservation of the pavements and prevention of accidents. Somewhat similar words in the Public Health Act, 1848, to those contained in this section were decided to

Section 109.

Notice to be given by companies to vestries and district boards when pavement, &c., is required to be taken up (*d*).

109. No company or person shall break up or open the pavement, surface or soil of any street, the paving whereof is under the control and management of the vestry or district board of any parish or district, for the purpose of making and laying down any main of pipes, or for any other purpose whatsoever, except in cases of emergency arising from defects in pipes or other works without having previously given three clear days' notice in writing to such vestry or district board, stating in such notice the name of the street and the particular part thereof in which such pavement, surface, or soil is intended to be broken up or opened, the day on which the work is proposed to be commenced, and the time within which it will be completed;

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be permissive only, and that the board had a discretion with respect to placing posts and rails for the safety of foot passengers; *Wilson* v. *Mayor of Halifax*, 32 J. P. 230; 37 L. J. Ex. 44. See as to the liability of a parish surveyor under the General Highway Act, 5 & 6 Will. 4, c. 50, s. 24. with respect to securing horse and foot causeways; *Ellis* v. *Woodbridge*, 29 L. J. M. C. 183; and as to unfenced sewers and ditches, *Cornwell* v. *The Metropolitan Commissioners of Sewers*, 19 J. P. 313, where it was held that the metropolitan commissioners of sewers were not liable for an accident in consequence of a sewer adjoining a highway within their district being unfenced. See also *R.* v. *Whitney*, 3 Ad. & Ell. 699.

(*d*) By section 73 of 25 & 26 Vict. c. 102, *post*, the powers of the General Paving Act, 57 Geo. 3, c. 29, for improving and regulating streets, and for the suppression of nuisances, are conferred upon vestries and district boards. That Act contains a series of provisions relative to the breaking up of pavements for the works of water and gas companies, and commissioners of sewers. Many of these, which extend from the 19th to the 23rd section, inclusive, are superseded by the present Act, but others are still in force. See clauses, *post*, Appendix. Any company or persons who take up the pavement and dig trenches in the roadway, without parliamentary power for that purpose, and the householder who authorizes such acts, are liable to be indicted for a nuisance; *R.* v. *The Longton Gas Company*, 20 L. J. M. C. 118. See a complaint by the Westminster district board against the Gaslight and Coke Company for breaking up the pavement of a street, and as to what amounted to an adjudication by the magistrate; *R.* v. *Paynter*, 26 L. J. M. C. 102; and see further *Cox* v. *Sheffield Gas Co.*, 31 D. M. & G. 304; *Pudsey Gas Co.* v. *Corporation of Bradford*, L. R. 15 Ex. 167; *Dover Gas Co.* v. *Mayor of Dover*, 1 Jur. (N.S.) 812.

See Metropolis Gas Act, 1860, section 54, referred to in note to 110, *infra*.

The Metropolitan Subways Act, 1868, empowers the metropolitan board to require companies to lay pipes in the subways referred to, and contains provisions as to the use and supervision of subways, &c. The Tramways Act, 1870, requires the consent of vestries and district boards as "road authorities" for the breaking up of roads by the promoters, and contains provisions with respect to repair, interferences with pipes, tubes, wires, &c., and as to other matters. See the Acts, *post*, Appendix. A license by a highway board to a gas company, is a good consideration for a permission to the board to make good a road and pay money; *Edgware Highway Board* v. *Harrow Dist. Gas Co.*, 9 Cox Mag. Ca. 254. The Court of Chancery has no jurisdiction to restrain a company from breaking up a street to lay gas pipes in the ordinary manner; *Att.-Gen.* v. *Cambridge Gas Co.* 38 L. J. Ch. 94. Where commissioners were empowered by a local Act passed in 1788, to light streets, they were held entitled to break up streets for the purpose of any improved mode of lighting, *e.g.*, by gas; *ibid.*

As to notice to lay pipes, &c., where no plans had been approved; *Edgeware Highway Board* v. *Colne Valley Water Co.*, L. R. W. N., 1877, p. 154.

Section 109. and in any such case of emergency as aforesaid such company or person shall, within twelve hours after they or he begin to break up or open such pavement, surface, or soil as aforesaid, give such notice as aforesaid to the said vestry or district board; and no such pavement, soil, or surface shall be broken up or opened for the purpose of laying down any new main of pipes for the conveyance of water during any part of the months of December, January, and February, without the consent of the said vestry or district board; and no gaslight company shall at any time break up or open any such pavement, surface, or soil for the purpose of laying down any new mains of pipes, without the consent in writing of the said vestry or district board; and every company or person offending against this enactment shall for every such offence forfeit a sum not exceeding £5 (*a*), and shall, within twenty-four hours after notice in writing from the vestry or district board, cause such mains of pipes to be taken up and removed, and the pavement, surface, or soil to be reinstated and put into its former state: Provided always, that any gaslight company may break up or open any such pavement, surface, or soil, for the purpose of laying down and attaching to mains and pipes already existing any new service pipes, on giving to the said vestry or district board, three days at least before so doing, notice of their intention to break up or open such pavement, surface, or soil for such purpose.

Streets not to be broken up, except under the superintendence of vestry or board.

Streets broken up to be reinstated without delay.

110. Whenever it is necessary, from any cause whatever, for any company or person to break up or open the pavement, surface, or soil of any street, such street, and the pavement, surface, and soil thereof, shall be broken up and opened under the superintendence of the vestry or district board of the parish or district in which the same is situate, and in such manner, and as regards gas companies at such time, as they shall direct (*b*); and such company or person shall with all convenient speed complete the work on account of which the same is broken up or opened, and fill in the ground and make good (*c*) the pavement or surface or soil so broken up or opened, and carry away the rubbish occasioned thereby, and shall in the meantime cause the place where such pavement or surface or soil is so broken up or

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When a Tramway Company, opened a road for repair of a sinking, under section 28 of the Tramways Act, 1870, and the work was superintended by the surveyor of the vestry, the latter was held not entitled to the expenses of superintendence; *Vestry of St. Luke's* v. *N. Metropolitan Tramway Co.*, L. R. 1 Q. B. D. 760.

A railway company was held entitled under the powers of a special Act passed before the Metropolis Management Act, 1855, to build a station in a street, subject to the jurisdiction of a district board, without the consent of that board; *London and Blackwall Railway Co.* v. *Limehouse District Board*, 26 L. J. Ch. 164.

(*a*) As to recovery of this and the other penalties incurred under the provisions relative to breaking up pavements, see section 227.

(*b*) The Metropolitan Gas Act, 1860, 23 & 24 Vict. c. 125, s. 54, gives a power to the secretary of state to authorize gas mains or pipes to be laid down by companies in accordance with the provisions of that Act, where the local authority refuse or delay their consent.

(*c*) See the 82nd section of 25 & 26 Vict. c. 102, *post*, as to the reinstatement of pavements broken up by companies for their works. A contractor who had opened a highway (not a turnpike road) for a sewer, and done the work of filling in properly, was held not liable for damage from subsequent subsidence; *Hyam* v. *Webster*, 36 L. J. Q. B. 166; L. R. 4 Q. B. (Ex. Ch.) 138; and see *Gray* v. *Pullen*, 34 L. J. Q. B. 265.

opened to be fenced and guarded, and shall set up and maintain upon or against the part of the pavement, surface, or soil so broken up or opened a sufficient light during every night that such pavement or surface or soil is continued open or broken up.

Penalty on persons taking up pavements neglecting to reinstate them, and to place lights during the night-time to prevent accidents.

111. If any company or person authorized to break up or open any of the pavement or surface of any street, for the purpose of laying, altering, or repairing any gas, water, or other pipe, or other lawful cause, do not with due diligence cause the ground to be filled in, and the pavement to be reinstated, and the surface to be made good, in a proper and substantial manner, or do not in the meantime fence and guard the same, and affix and maintain lights during the night near to the places where any ground is open, so as to prevent any accident, every such company or other person so offending shall for every such offence forfeit a sum not exceeding £5, and also a further sum not exceeding 40s., for every day during which such offence continues; and no such pavement shall be considered to have been reinstated in a proper and substantial manner by any such company or other person unless the same have been reinstated with the same or similar materials of the like quality and thickness, and cemented and bound together in the same or in an equally substantial manner, as those of which it was composed, in such manner as is satisfactory to the vestry or board.

Vestry or district board to direct pavements injured by water or gas pipes to be repaired by company.

Penalty for neglect.

112. In case any part of the pavement of any street, be sunk, broken, injured, or damaged, by reason of the breaking, bursting, or want of repair of any pipe belonging to any water, gas, or other company, it shall be lawful for the vestry or district board of the parish or district in which such pavement is situate, if they deem it expedient so to do, to cause notice to be given to the company to whom such pipe is supposed to belong, forthwith well and sufficiently to repair and make good such pavement; and if the company to whom such notice is given do not, within forty-eight hours next after such notice, take up such pavement, and well and sufficiently repair and amend such pipe, and cause the ground to be well and sufficiently filled in and rammed down, and the said pavement to be relaid and repaired, to the satisfaction of the vestry, or district board, then such company so offending shall for every such offence forfeit and pay any sum not exceeding £20.

Company opening the ground to repair a pipe discovered to belong to another company, to give notice to such company, and to be reimbursed expenses.

113. Provided always, that in case it be discovered, after any pavement in any street has been taken up by any company, and the ground opened, that the pipe beneath the surface of such pavement required to be repaired and amended does not belong to the company to whom such notice has been given as aforesaid, but to some other company, then such first-mentioned company to whom such notice has been so given as aforesaid shall, within forty-eight hours after such discovery, cause a copy of such notice to be in like manner given to the company to whom such pipe belongs, and require them to obey, conform to, and comply with the original notice, instead of the company to whom such original notice was given as aforesaid; and such other company to whom such last-mentioned notice is given as aforesaid shall reimburse and pay, on demand, to the first-mentioned company, the reasonable costs and charges incurred in and about the taking up of the pavement and opening the ground; and the said last-mentioned company shall obey, conform to, and comply with the said original notice, and execute and perform the work mentioned therein, in such and the same manner, and within such and the same time, in all respects, as if the said original notice had been given to

Section 113. such last-mentioned company, and they shall be liable to and shall incur the same penalties and forfeitures, on neglect so to do, as they would have incurred and been liable to if the said original notice had been given to them in manner before directed with respect to such first-mentioned company, and if the company by whom such pavement has been first taken up, and who have opened the ground, neglect to give the notice hereby required to the company to whom such pipe actually belongs, such company so neglecting shall for every such offence forfeit and pay any sum not exceeding £20.

Power to vestry or district board to reinstate pavement, and charge the expenses to the parties.

114. Provided also, that whenever the permanent surface or soil of any street is broken up or opened, it shall be lawful for the vestry or district board of the parish or district in which the same is situate, in case they think it expedient so to do, to fill in the ground and to make good the pavement or surface or soil so broken up or opened, and to carry away the rubbish occasioned thereby, instead of permitting such work to be done by the company or person by whom such surface or soil is broken up or opened; and the expenses of filling in such ground and of making good the pavement or soil so broken up or opened shall be repaid, on demand, to the vestry or board by such company or person.

Power for vestry or district board to contract with company for restoring pavements.

115. It shall be lawful for the vestry or district board of any parish or district to contract and agree, for any term of years or otherwise, with the several companies or persons authorized to take up any of the pavements or other formed surface of any of the streets within such parish or district, for the filling in, paving, and restoring of such parts of the said streets as may be from time to time required to be taken up for the purpose of laying, altering, or repairing any pipes or other like purpose.

As to the watering of streets.

116. Every vestry and district board shall have full power and authority to cause all or any of the streets in their parish or district to be watered as often as they think fit, and also to cause any wells to be dug and sunk in such public places as they think proper, and also to erect and fix any pumps in any public places, for the gratuitous supply of water (*a*) to the inhabitants of the parish or district.

Vestry or district board to cause footways to be cleansed.

117. Every vestry and district board shall cause any footway within their parish or district to be scraped, swept, or cleansed in such manner and at such times as they think fit; but this enactment shall not relieve any occupier of any house or building or any company whatsoever from any liability (*b*) to scrape, sweep, or cleanse, or cause to be scraped, swept, or cleansed, any part of any such footway, or from any penalty for neglect so to do.

(*a*) See proviso to section 150, prohibiting boards and vestries from using or permitting the use of any of the works therein described for carrying water by supply-pipes to any house or factory for domestic, manufacturing, or commercial purposes. By the 25 & 26 Vict. c. 102, s. 67, they are empowered, subject to the conditions expressed, to compel a supply of water for houses; and section 70 enables them to provide and maintain drinking fountains. See *Metropolitan Board of Works* v. *New River Company*, 41 J. P. 790, and *Hildreth* v. *Adamson*, 8. C. B. (N.S.) 587. As to expenses of repairing a well under 35 & 36 Vict. c. 79, refer to *Witney* v. *Wycombe*, 40 J. P. 149.

(*b*) See the provisions in 57 Geo. 3, c. 29, s. 63, relative to the sweeping and cleansing of footways, and the penalties for neglecting to sweep and cleanse footways in the Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 6.

Section 118.

Vestries and district boards may appoint and pay crossing sweepers.

118. It shall be lawful for every vestry and district board to appoint and pay, or for two or more vestries or district boards to unite, when necessary, in appointing and paying, suitable persons to cleanse and sweep, and to keep properly cleansed and swept daily, crossings for passengers over the streets and public thoroughfares within their respective jurisdictions, and in such situations as the said vestries or district boards may from time to time fix and determine, which persons so appointed shall be distinguished by their dress or some distinctive mark as public servants.

Owners, &c., to remove future projections, on notice from vestry or district board (*c*).

119. If any porch, shed, projecting window, step, cellar door, or window, or steps leading into any cellar or otherwise, lamp, lamp-post, lamp-iron, sign, sign-post, sign-iron, show-board, window-shutter, wall, gate, fence, or opening, or any other projection or obstruction placed or made against or in front of any house or building after the commencement of this Act shall be an annoyance (*d*) in consequence of the same projecting into or being made in or endangering or rendering less commodious the passage along any street (*e*) in their parish or district, it shall be lawful for the vestry or district board to give notice in writing to the owner or occupier of such house or building to remove such projection or obstruction, or to alter the same, in such manner as the vestry or board think fit; and such owner or occupier shall within fourteen days after the service of such notice upon him remove such projection or obstruction, or alter the same in the manner directed by the vestry or board; and if the owner or occupier of any such house or building neglect or refuse, within fourteen days after

Penalty for neglect.

(*c*) See the 57 Geo. 3, c. 29, s. 72, containing very comprehensive and summary powers for the regulation and removal of encroachments, and projections. Some of these are probably still in force, but in order to apply them with safety they ought to be very carefully compared with this and the following section, and also with the 26th section of the Metropolitan Buildings Act, the 18 & 19 Vict. c. 122, recognizing the legality of certain projections and regulating them. In some instances, too, the 75th section of the 25 & 26 Vict. c. 102, which see, *post*, as to buildings beyond the general line, may have a bearing on the subject.

(*d*) Under this enactment it seems to be a question for the magistrate to decide whether or not the projection is, or is not, an annoyance; *Gabriel* v. *Vestry of St. James, Westminster*, 23 J. P. 372. In *Read* v. *Perrett*, L. R. 1, Ex. D. C. A. 349, in a proceeding for setting up a projection contrary to the Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 60, the rejection by the magistrate of the evidence of persons to show that they were not incommoded, was held right. Where a lamp against a house fell in consequence of its defective condition and caused injury, the occupier was held liable in damages though he was ignorant of the defect; *Tarry* v. *Ashton*, L. R. 1 Q. B. D. 314.

(*e*) The occupiers of houses in a road in the metropolis had used a space of ground between a paved foot-way and the carriage way for the purposes of their trades, paying a small yearly rent to the lord of the manor, subject to which use the public have always passed over this space, as these obstructions would permit, as of right. On the space opposite his house a publican erected a moveable shed, which caused no obstruction to the paved footway. *Held*, that this space was not a "street," and that the shed was not an obstruction which might be removed by the district board, within the meaning of this and the 120th section. *Semble*, that this space had been partially dedicated to the public, and could not be considered private property without any public easement; *Le Neve* v. *the Vestry of Mile End Old Town*, 27 L. J. Q. B. 208.

Section 119. such notice, to remove such projection or obstruction, or to alter the same, in the manner directed by the vestry or board, he shall forfeit any sum not exceeding £5, and a further sum not exceeding 40s. for every day during which such projection or obstruction continues after the expiration of such fourteen days from the time when he may be convicted of any offence contrary to the provisions hereof.

Vestry or district board may remove existing projections, and make compensation for the same.

120. It shall be lawful for every vestry and district board, if any projection or obstruction which has been placed or made against or in front of any house or building in any such street (*a*) before the commencement of this Act shall be an annoyance as aforesaid, to cause the same to be removed or altered as they think fit: Provided always, that the vestry or board shall give notice in writing of such intended removal or alteration to the owner or occupier against or in front of whose house or building such projection or obstruction shall be, seven days before such removal or alteration shall be commenced, and shall make reasonable compensation to every person who shall incur any loss or damage by such removal, excepting in cases where the obstruction or projection may now be removable under any Act (*b*), in which case no compensation shall be made.

Hoards to be erected during repairs.

121. Every person who shall build or begin to build, or to take down or begin to take down, any house, building, or wall, or alter or repair, or begin to alter or repair, the outward part of any house, building, or wall, shall, in all cases in which the footway is thereby obstructed or rendered inconvenient, cause to be put up a proper and sufficient hoard or fence, with a convenient platform and handrail, if there be room enough for the same, to serve as a footway for passengers outside of such hoard or fence, and shall continue such hoard or fence, in such cases as aforesaid, with such platform and handrail, standing and in good condition, to the satisfaction of the vestry or district board of the parish or district in which such house, building, or wall is situate, during such time as may be necessary for the public safety or convenience, and shall, in all cases in which the same is necessary to prevent accidents, cause such hoard or fence to be well lighted during the night; and every such person who fails to put up such hoard or fence and such platform, with such handrail as aforesaid, or who does not, whilst the said hoard or fence is standing, keep the same well lighted during the night, shall for every such offence forfeit a sum not exceeding £5, and a further sum not exceeding 40s. for every day during the continuance of such default.

Penalty on not erecting hoards.

No hoard to be erected without license from

122. It shall not be lawful for any person to erect or set up in any street any hoard or fence or scaffold for any purpose whatever, or any posts, bars, rails, boards, or other things by way of inclosure, for the purpose of making mortar, or of depositing bricks, lime, rubbish, or other materials, without a licence in writing first had and obtained from the clerk or surveyor of the vestry or district board of the

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(*a*) See note to last section.

(*b*) At the time of the passing of this Act, 57 Geo. 3, c. 29, did not apply to the whole of the places included within the present metropolitan limits. Certain of its provisions, namely, those relating to the regulation of streets and suppression of nuisances, have since been extended to the whole of them by 25 & 26 Vict. c. 102. Some of the local Acts in force in parishes also contain provisions on this subject.

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parish or district in which such street is situate; and every such licence shall state the place where and the purpose for which such hoard or fence, scaffold or inclosure, is to be set up or made, and the size thereof, and the time for which it is to be permitted to continue.

vestry or district board (*c*).

123. If any person erect or set up in any street any hoard or fence or scaffold for any purpose whatever, or any posts, bars, rails, boards, or other things by way of inclosure, for the purpose of making mortar, or of depositing bricks, lime, rubbish, or other materials, without a licence from the vestry or district board, or do any such act as aforesaid in any other manner than as permitted by such licence, or continue the same beyond the time stated in such licence, or fail to keep any hoard, fence, platform, or handrail in good repair, he shall for every such offence forfeit (*e*) a sum not exceeding £5, and a further sum not exceeding 40s. for every day during the continuance of such offence; and it shall be lawful for the vestry or board to cause such hoard, fence, scaffold, or inclosure to be pulled down, and the materials thereof, and also all the bricks, mortar, lime, or other building materials, or other matters or things contained within any such enclosure, to be removed and deposited in such place as the vestry or board may think fit, and to be kept until the charges of pulling down and removing the same be paid to the vestry or board; and in case the same be not claimed and the said charges paid within the space of eight days next after such seizure thereof, it shall be lawful for the vestry or board to order the same to be sold, and by and out of the proceeds of such sale to pay such charges, rendering any surplus to the owner or other person by law entitled thereto; and in case the proceeds of such sale be insufficient to cover such charges and the charges of selling and disposing of such materials, matters, and things, the deficiency shall be repaid by the owner of such materials, matters, and things to the vestry or district board, on demand.

If hoard be erected or materials be deposited in any manner otherwise than to the satisfaction of the vestry or district board, the same may be removed (*d*).

124. Every person laying out or opening any new street, or building therein, shall, during the operations necessary for forming such new street, or for building therein, take all such precautions for guarding against injury to the passengers along such street as may be directed by the vestry or district board of the parish or district within which such operations are being carried on; and if any person fail to comply with the directions of such vestry or district board, within such time as may be limited by them, such vestry or district board may do whatever may be necessary for carrying the same into

Providing against accidents in laying out new streets, &c.

(*c*) The court of Queen's Bench seemed to be of opinion that the granting or refusing this licence was entirely within the discretion of the vestry; *R.* v. *Vestry of St. Leonard's, Shoreditch*, 20 J. P. 404. But at all events they will not interfere when the applicant has taken the matter into his own hands and erected the hoard without leave; *Ibid.* Compare 57 Geo. 3, c. 29, s. 75, *post*, Appendix, as to the erection of hoards, &c. The Commissioners of Sewers of City of London, acting under City of London Sewers Act, 1848, were held to have no right to require four licences for a hoarding running into four streets, nor to limit the duration of the licence; *R.* v. *Commissioners of Sewers of City of London*, 22 L. T. (N.S.) 582. Nor to annex a condition that no placards should be placed on the hoard; S. C. 6 Cox Mag. Ca. 411.

(*d*) Under the 75th section of 57 Geo. 3, c. 29, it was held that a surveyor appointed under the Act had no right to remove a ladder placed against a house; *Davey* v. *Warne*, 14 M. & W. 199.

(*e*) See section 227, as to recovery of penalties.

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effect, and the expenses thereby incurred shall be repaid to such vestry or district board by the person laying out or opening such new street or building therein, as aforesaid, and shall be recoverable by them from such person in manner provided by this Act.

Vestries and district boards to appoint scavengers.

125. It shall be lawful for every vestry and district board and they are hereby required to appoint and employ a sufficient number of persons, or to contract (*a*) with any company or persons, for the sweeping and cleansing of the several streets within their parish or district, and for collecting and removing all dirt, ashes, rubbish, ice, snow, and filth, and for the cleansing out and emptying of privies, and cesspools, sewers, and drains, in or under houses and places within their parish or district (*b*); and such company or persons are hereinafter referred to as scavengers; and such scavengers or their servants shall, on such days and at such hours and in such manner as the vestry or district board shall from time to time appoint, sufficiently execute and perform all such works and duties as they respectively are employed or contract to execute or perform; and if any such company or person fail in any respect properly to execute and perform such works and duties, such company or person shall for every such offence forfeit a sum not exceeding £5.

Penalty for obstructing scavengers in performance of their duty.

126. Any occupier of any house or land or other person who refuses or does not permit any soil, dirt, ashes, or filth to be taken away by the scavengers appointed by or contracting with any vestry or board as aforesaid, or who obstructs the said scavengers in the performance of their duty, shall for every such offence forfeit and pay a sum not exceeding £5 (*c*).

Refuse collected to be vested in vestry or district board, who may dispose of the same towards defraying their expenses.

127. All dirt, dust, nightsoil, ashes, and rubbish collected as aforesaid shall be the property of such vestry or board, and such vestry or board shall have full power to sell and dispose of the same for the purposes of this Act as they shall think proper, and the person purchasing the same shall have full power to take, carry away, and dispose of the same for his own use, and the money arising from the

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(*a*) By section 95 of 25 & 26 Vict. c. 102, *post*, vestries, &c., are empowered to contract for the removal of manure from stables and cowhouses; and by the same Act, section 89, any persons other than the parties contracting with the vestry, &c., who shall remove dirt, dust, &c., are made liable to penalties. The vestry of a metropolitan parish were held bound to perform the same duties as regards the removal of dust in the case of a workhouse as of other houses, and in default the expense of such removal might be recovered from them; *Guardians of Holborn Union* v. *Vestry of Shoreditch*, 41 J. P. 38. As to the removal of dust under 21 & 22 Vict. c. 98 (Local Government Act), see *Hobbs* v. *Fox*, 31 J. P. 387.

(*b*) By the Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 60, persons are subjected to penalties for emptying privies between the hours of six in the morning and twelve at night, or committing any of the other nuisances there enumerated. Commissioners of sewers and persons in their service, &c., were exempted from the operation of the enactment.

(*c*) See section 27 as to recovery of penalty. The 42nd section of the Public Health Act, 1875, exempts occupiers of houses from a penalty in respect of matters produced on their own premises intended to be removed for sale or their own use, and meantime kept so as not to be a nuisance. Ashes from a brassfounder's furnace containing particles of metal were held not "dust, cinders, or ashes" within 57 Geo. 3, c. 29, s. 60 (Metropolitan Paving Act); *Law* v. *Dodd*, 17 L. J. M. C. 65; and see *Filby* v. *Combe*, 2 M. & W. 677; *Lyndon* v. *Standbridge*, 2 H. & N. 45.

sale thereof shall be applied towards defraying the expenses of the execution of this Act, other than the sewerage expenses. Section 127.

128. In case any scavenger be required by the owner or occupier of any house or land to remove the refuse of any trade, manufacture, or business (*d*), or of any building materials, such owner or occupier shall pay to the scavenger a reasonable sum for such removal, such sum, in case of dispute, to be settled by two justices (*e*). Owners or occupiers to pay scavengers for removal of refuse of trades.

129. If any dispute or difference of opinion arise between the owner or occupier of any such house or land and the scavengers required to move such refuse as to what shall be considered as refuse, it shall be lawful for any two justices, upon application made to them by either of the parties in difference, to determine whether the subject matter of dispute is or is not refuse of trade, manufacture, or business, or of any building materials, and in every such case the decision of such justices shall be final and conclusive. Dispute as to what is refuse of trade, &c., to be determined by justices.

130. Every vestry and district board shall cause the several streets within their parish or district to be well and sufficiently lighted, and for that purpose shall maintain, or set up and maintain, a sufficient number of lamps in every such street, and shall cause the same to be lighted with gas or otherwise, and to continue lighted at and during such times as such vestry or board may think fit, necessary, or proper; and all public lamps, and the lamp posts and lamp irons and fittings thereof, to be provided by any vestry or district board, shall vest in such vestry or board. Vestries and district boards to cause streets to be lighted (*f*).

(*d*) Ashes from coals burnt in the furnace of a steam engine for sawing, &c., materials in the business of a pianoforte maker are "refuse of trade, manufacture, or businesss" within this provision; *Gay* v. *Cadby*, L. R. 2 C. P. D. 391.

A vestry is bound to remove whatever it would be mischievous and injurious to health to retain on the premises, but not to remove such refuse as old boots and shoes, old coal-scuttles, tin canisters, &c.; *Collins* v. *Vestry of Paddington.—Times*, April 2, 1879.

(*e*) See note to section 225, *post*.

(*f*) The word "street" is, by the 250th section defined to mean "any highway (except the carriage-way of any turnpike road), and any road, bridge (not being a county bridge), lane, footway, square, court, alley, or passage, &c.," by the Metropolis Management Amendment Act, 1862, s. 112, extended to include "any mews and a part thereof." The language of this section is imperative, and the court will compel the performance of the duty of lighting, where the locality in question is clearly made out to be a street; *R.* v. *Vestry of St. Mary, Islington*, 22 J. P. 383; Ell. Bl. & E. 743; but the vestry have some discretion to decide what is "a street," and where the owner of a road not finished or completely formed though partly built upon, and not yet taken to by the vestry, applied for a *mandamus* to the vestry to light the so-called street, the court refused to interfere, though the houses already built were rated in respect of lighting, but only at half the usual amount; *ibid*. See rule for a *mandamus* to the vestry to light that part of Vauxhall Bridge which was within their parish; *R.* v. *Vestry of Lambeth*, 25 J. P. 374. The 23 & 24 Vict. c. 125, the Metropolis Gas Act, *post*, Appendix, by the 22nd section requires gas companies, subject to the restrictions expressed, to light all public lamps in the public streets on the requisition of the local authority, which, by the interpretation clause, includes vestries and district boards. The 165th section of this Act preserves the existing exemptions of land from lighting rates, where 3 & 4 Will. 4, c. 90 (lighting and watching) were in force at the time of the passing of

Section 131.

No slaughter-house to be licensed under 14 & 15 Vict. c. 61, without notice to vestry or district board.

131 (*a*). Before any licence for the use of any place within any parish mentioned in either of the schedules (A.) and (B.) to this Act as a slaughter-house is granted by any quarter sessions of the peace under the provisions of the Act of the session holden in the fourteenth and fifteenth years of Her Majesty, chapter sixty-one (the Metropolitan Market Act, 1851) (*b*), one month's previous notice of the intention to apply for such licence shall be given to the vestry or district board of the parish or district in which such place is situate, to the intent that such vestry or district board, if they think fit, may show cause against the grant of such license.

Vestries and district boards to appoint medical officers of health.

132. Every vestry and district board shall from time to time appoint one or more legally qualified (*c*) medical practitioner or practitioners of skill and experience to inspect and report periodically upon the sanitary condition of their parish or district, to ascertain the existence of diseases, more especially epidemics, increasing the rate of mortality, and to point out the existence of any nuisance or other local causes which are likely to originate and maintain such diseases, and injuriously affect the health of the inhabitants, and to take cognizance of the fact of the existence of any contagious or epidemic diseases, and to point out the most efficacious mode of checking or preventing the spread of such diseases, and also to point out the most efficient modes for the ventilation of churches, chapels, schools, lodging-houses, and other public edifices within the parish or district, and to perform any other duties of a like nature which may be required of him or them; and such persons shall be called "medical officers of health;" and it shall be lawful for the vestry or board to pay to every such officer such salary as they think fit, and also to remove any such officer at the pleasure of such vestry or board

Appointment of Inspectors of nuisances (*d*).

133. Every vestry and district board shall nominate and appoint such number of persons to be inspectors of nuisances in their parish or district as the vestry or board may think fit; and the inspectors of nuisances shall superintend and enforce the due execution of all duties to be performed by the scavengers employed or contracted

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the Act. It was held by the Exch. Ch. affirming the judgment of the Q. B. that a company supplying gas in the metropolis are subject to all the restrictions imposed upon them for the benefit of the public by the Metropolis Gas Act, 1860, and the City of London Gas Act, 1868; *Gas Light and Coke Company* v. *Vestry of St. George's, Hanover Square*, 8 Cox Mag. Ca. 120.

(*a*) This section is repealed by the 92nd section of 25 & 26 Vict. c. 102, *post*; and the 93rd and 94th sections of that Act direct that cow-houses shall also be licensed, and contain the provisions in relation to the licensing both of slaughter-houses and cow-houses. See now the Slaughter-houses (Metropolis) Act, 1874, and notes thereon to section 92 of Metropolis Management Amendment Act, 1862, *post*.

(*b*) The 14 & 15 Vict. c. 61, was repealed by 20 & 21 Vict. c. 135 (Loc. & Per.), which, by section 35, also provided that before licenses were granted for slaughter-houses notice should be given to the vestry or district board. See note to section 131, *supra*.

(*c*) That is by registration under 21 & 22 Vict. c. 90.

(*d*) See as to the appointment of sanitary inspectors under the Nuisances Removal Amendment Act, 23 & 24 Vict. c. 77, s. 9. By 25 & 26 Vict. c. 102, s. 91, *post*, penalties are imposed for keeping swine in unfit places, or in which the breeding, &c., may create a nuisance or be injurious to health, and see note to that enactment.

Section 133

with under this Act, and report to the vestry or district board the existence of any nuisances; and the vestry or board shall require every such inspector to provide and keep a book in which shall be entered all complaints made by any inhabitants of the parish or district of any infringement of the provisions of this Act, or of any bye-laws made thereunder, or of nuisances; and every such inspector shall forthwith enquire into the truth or otherwise of such complaints, and report upon the same to the vestry or board at their next meeting; and such report, and the order of the vestry or board thereon, shall be entered in a book, which shall be kept at their office, and shall be open at all reasonable times to the inspection of any inhabitant of the parish or district; and it shall be the duty of such inspector, subject to the direction of the vestry or board, to make complaints before any justices, and take legal proceedings for the punishment of any person for any offences under this Act or any such bye-laws.

Vestries and district boards to be the local authorities to execute the Nuisance Removal Acts (*e*).

134. Every vestry and district board under this Act shall execute, within their respective parish or district, all the duties and powers exercisable under the Nuisances Removal and Diseases Prevention Act, 1848, and the Nuisances Removal and Diseases Prevention Act, 1849, by any commissioners or other body, or any officers having under any Act powers of cleansing, and shall be the local authority to execute any Act passed or to be passed in the present session, amending or repealing the said Acts or either of them.

Duties and Powers of Metropolitan Board of Works (f).

Main sewers vested in the metropolitan board of works and power to such board to make sewers.

135. The sewers mentioned in schedule (D.) to this Act, being the main sewers now vested in the commissioners of sewers of the city of London and in the metropolitan commissioners of sewers respectively (*g*), with the walls, defences, banks, outlets, sluices, flaps, penstocks, gullies, grates, works, and things thereunto belonging, and the materials thereof, with all rights of way and passage used and enjoyed by such commissioners respectively over and to such sewers, works, and things, and all other rights concerning or incident to such sewers (*h*), works, and things, shall be vested in the metropolitan board of works, and such board shall make (*i*) such sewers and works

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(*e*) See the Nuisances Removal Act, 18 & 19 Vict. c. 121, and the amending Acts, and the Sanitary Act, 1866, *post*, Appendix.

(*f*) See note to section 43, *ante*, as to powers and duties of the metropolitan board under other Acts of parliament.

(*g*) See note to section 68, *ante*.

(*h*) Where a railway company, in executing their works, deprived a sewer belonging to the metropolitan board of its lateral support less than 20 years after it was made, it was decided by the Ex. Ch. affirming the judgment of the court below, that the board had acquired no right to such support for their sewer, and could not maintain an action for the sum awarded by the arbitrator under the Lands Clauses Consolidation Act for the damage; *Metropolitan Board of Works* v. *Metropolitan Railway Company*, L. R. 3 C. P. 612; 4 C. P. (Ex. Ch.) 192. Refer as to liability of the occupier and owner of a house for damage to the adjoining house by removal of the adjacent land without leaving sufficient support, *Bower* v. *Peate*, 40 J. P. 789; and see *Bonomi* v. *Backhouse*, 9 H. L. Ca. 503; as to prescriptive right to lateral support of a house for 20 years, refer to *Angus* v. *Dalton*, L. R. 4 Q. B. (C. A.) 162, overruling judgment of Q. B. D.

(*i*) The 21 & 22 Vict. c. 104, s. 1, *post*, describes the works which the

Section 135. as they may think necessary for preventing all or any part of the sewage (*a*) within the metropolis from flowing or passing into the river Thames in or near the metropolis, and shall cause such sewers and works to be completed on or before the 31st day of December, 1860 (*b*), and shall also make all such other sewers and work, and such diversions or alterations of any existing sewers or works vested in them under this Act, as they may from time to time think necessary for the effectual sewerage and drainage of the metropolis (*c*), and

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board are required to make, as "the necessary sewers and works for the improvement of the main drainage of the metropolis, and for preventing, as far as may be practicable, the sewage of the metropolis from passing into the Thames *within* the metropolis." See sections 24 and 25 of 25 & 26 Vict. c. 102, *post*, as to formation and maintenance of bridges, arches, culverts, &c. As to obligation of vestries and district boards with respect to the construction of sewers, see the decisions referred to in note to section 69, *ante*.

(*a*) See definition of the word "sewage" in the 32nd section of 21 & 22 Vict. c. 104, for the purification of the Thames and main drainage of the metropolis, *post*.

(*b*) Extended by section 26 of 21 & 22 Vict. c. 104, as explained by section 26 of 25 & 26 Vict. c. 102, to 31st December, 1863. So much of this section as requires the completion of the works on or before the 31st December, 1860, was repealed by the Metropolitan Board of Works (Loans) Act, 1869. The Metropolitan Main Drainage Extension Act, 1863, had extended the time to the 31st December, 1866, and the Metropolitan Main Drainage Extension Act, 1865, extended the time for borrowing the sums authorized to be raised under the last-mentioned Act to 31st December, 1867.

(*c*) See certain Acts relating to the drainage of parishes, &c., not within the metropolitan area; namely, 34 & 35 Vict. c. 129, which authorises the Hornsey Local Board of Health to make a sewer in the parishes of Stoke Newington and Hornsey, to be connected by a junction with the northern high level sewer, with provisions, amongst others, for the payment of certain sums to the metropolitan board by the local board by way of contribution towards the making and maintaining the high level sewer, and maintaining and working the main drainage system; the 35 & 36 Vict. c. 163, repealing the 30th section of the last-mentioned Act as to the contribution towards the cost of the main drainage system and substituting other provisions, with power to the local board to borrow and to the metropolitan board to lend, with the consent of the treasury, money required for permanent works; the 36 & 37 Vict. c. 218, authorizing the guardians of the Bromley Poor Law Union to connect, subject to the conditions and provisions specified, drains or sewers made or to be constructed within the Beckenham sewage area with the Penge and Bell Green sewer, with provisions for payment by the guardians to the Lewisham district board of the sum specified in the Act and the yearly sums mentioned, and also of certain yearly sums to the Metropolitan Board of Works as contribution towards the cost of the main drainage system, with the power of making assessments for these purposes, and a provision empowering the guardians to borrow and the metropolitan board to lend, with the consent of the treasury, the necessary sums for the purposes of the Act; the 37 & 38 Vict. c. 97, requiring the metropolitan board to permit the sewage of the South Hornsey district to be delivered into the northern high level and middle level sewers subject to the specified conditions with any others, provisions for payment to the metropolitan board by the local board of a capital sum by way of contribution towards the cost of constructing and maintaining those sewers, and certain yearly sums by way of contributing towards the current cost in respect of the main drainage system, and of other sums therein mentioned; the 38 & 39 Vict. c. 163, constituting a body to be

shall discontinue, close up, or destroy such sewers for the time being vested in them under this Act, as they may deem unnecessary, and such board shall from time to time repair and maintain the sewers so vested in them, or such of them as may not be discontinued, closed up, or destroyed as aforesaid; and for the purposes aforesaid such board shall have full power and authority to carry any such sewers or works through, across, or under any turnpike road (*d*) or any steeet (*e*) or place laid out as or intended for a street, as well beyond as within the limits of the metropolis, or through or under any cellar or vault under the carriageway or pavement of any street and into, through, or under any lands whatsoever (*f*) within or beyond the said limits, making compensation (*g*) for any damage done Section 135.

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called the West Kent Main Sewerage Board, gives power for the construction of a main sewer from Beckenham to Dartford and other works, with provisions for communications between sewers of the metropolitan and district boards with the sewers of the sewerage board, and payment of contribution, with powers to the sewerage board to borrow, and to the metropolitan board to lend, money raised by the creation and issue of metropolitan stock.

(*d*) See section 33 of 25 & 26 Vict. c. 102, *post*, providing for notice before breaking up turnpike roads and imposing other conditions.

(*e*) See interpretation of word "street," section 250, *post*, extended by section 112 of Metropolis Management Amendment Act, 1862. See express power to metropolitan board to stop up streets, roads, or ways, during execution of works, 25 & 26 Vict. c. 102, s. 21, *post*.

(*f*) The powers conferred by this section did not authorize the board to construct works on the soil or bed of the Thames. That power is however given by 21 & 22 Vict. c. 104, s. 2, but subject to the condition that the approval of the admiralty should have been previously obtained. Where, therefore, the board had executed works for carrying a sewer into the river, by which the plaintiff's ship was damaged, and the approval of the admiralty had not been obtained, they were held liable in an action for obstructing the navigation; *Brownlow* v. *The Metropolitan Board of Works*, 31 L. J. C. P. 140. Under the like words in the Public Health Act a local board were held entitled to make a sewer through private property raised above ground; *Roderick* v. *Aston Local Board*, L. R. 5 Ch. Div. 328. See sections 24 and 25 of 25 & 26 Vict. c. 102, *post*, as to communications between lands through which works are carried; the provisions contained in sections 34 and 35 of 25 & 26 Vict. c. 102, *post*, as to notices and other requirements where works will affect any railway or canal; sections 27 and 28 of 21 & 22 Vict. c. 104, *post*, requiring approval of works under that Act by the admiralty and conservators of the Thames; and section 30, regulating works under or over the river Lea.

(*g*) Under this and the corresponding provision in section 69, boards and vestries are empowered to carry their sewers through any lands, &c., whatsoever, on the sole condition of making compensation, and they are not compelled to purchase the land itself, or any easement in it, and the provisions of the 150th, 151st, and 152nd sections, enabling them to purchase land or rights or easements in land which they may deem necessary for the formation or protection of works, do not restrict the exercise of this power; *North London Railway Company* v. *Metropolitan Board of Works*, 28 L. J. Ch. 909. It was held upon the construction of the Public Health Acts, 1848 and 1875, that a side entrance or man-hole is not necessarily a part of a sewer, and that the power to construct a sewer did not carry with it the right to construct the side entrance on the footpath without the plaintiff's consent, and an injunction was granted to restrain the continuance of the side entrance until the defendants purchased the plaintiff's interest in the land; *Swanston* v. *Twickenham L. B. of Health*, 43 J. P. 206. The sole condition to the exercise of the power of carrying sewers through private property is to make compensation. The payment or tender of compensa-

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tion is not a condition precedent to the right of entry on lands to execute works; *Peters* v. *Clarson*, 7 M. & G. 548; *Lister* v. *Lobley*, 7 Ad. & E. 124; *North London Railway Company* v. *Metropolitan Board of Works*, *supra*; *Pettiward* v. *Metropolitan Board of Works*, 34 L. J. C. P. 301; and *Macey* v. *Metropolitan Board of Works*, 33 L. J. Ch. 377. Though the language of this part of the section giving compensation is somewhat different from that used in the 68th section of the Lands Clauses Act, 8 Vict. c. 18, it is similar in effect. The compensation mentioned in the 68th section of the Lands Clauses Act, is "in respect of any lands or of any interest therein which shall have been taken for or injuriously affected by the execution of the works," and the 6th section of the Railway Clauses Act directs full compensation for the value of the lands, &c., "and for all damage sustained by owners, &c.," by reason of the exercise as regards such lands of the powers vested in the company. The last-mentioned Act is, however, not incorporated with this Act. The decisions under the 68th section of the Lands Clauses Act, and other statutes containing compensation clauses, show that compensation can only be claimed for Acts authorized by the statute; *Broadbent* v. *Imperial Gas Company*, 26 L. J. Ch. 276; *In re Penny*, 26 L. J. Q. B. 225; *Beckett* v. *Midland Railway Company*, 37 L. J. C. P. 11; and see *Rhodes* v. *Airedale Drainage Commissioners*, L. R. 1 C. P. D. 380; and *Hall* v. *Mayor, &c., of Bristol*, L. R. 2 C. P. 322; and it can only be claimed where the act occasioning the injury would, without the statute authorizing it, have been the subject of an action at common law; *New River Company* v. *Johnson*, 2 E. & E. 435; *Hall* v. *Mayor of Bristol*, *supra*. But this rule does not apply where the act complained of was done on a claimant's own land, taken by a company under a statutory power; *Re Stockport, &c., Railway Company*, 33 L. J. Q. B. 251. If the land is not taken, and nothing is done which would have afforded a cause of action before the Act passed, it does not *injuriously affect* the land so as to constitute a ground for compensation; *In re Penny*, *supra*; *Caledonian Railway Company* v. *Ogilvy*, 2 Macq. H. L. Rep. 229; *Broadbent* v. *Imperial Gas Company*, 26 L. J. Ch. 276; *Chamberlain* v. *West end of London and Crystal Palace Railway Company*, 31 L. J. Q. B. 201; *Glover* v. *North Stafford Railway Company*, 20 L. J. Q. B. 376; *R.* v. *Metropolitan Board of Works*, 38 L. J. M. C. 24. *The King* v. *The London Dock Company*, 5 A. & E. 163, is overruled by the *Queen* v. *The Eastern Counties Railway Company*, 2. Q. B. 347; *Chamberlain* v. *West end, &c., and Crystal Palace Railway Company*, *supra*.

If the proceeding be in excess of the powers conferred by the statute, the remedy is by action; *Broadbent* v. *Imperial Gas Company*, 26 L. J. Ch. 276; *Rhodes* v. *Airsdale Commissioners*, L. R. 1 C. P. 402. And the injury in respect of which compensation is claimed, must be a damage to the land, and not merely an injury of a personal nature, though connected with the enjoyment of land; *R.* v. *Metropolitan Board of Works*, L. R. 3 C. P. 82; and see *Rickett* v. *Midland Railway Company*, L. R. 1 H. L. 205; *Beckett* v. *Midland Railway Company*, 37 L. J. C. P. 11; *R.* v. *Metropolitan Board of Works*, L. R. 4 Q B. 358.

A physical interference with a right giving additional market value to property apart from any user, gives a title to compensation, as where premises were depreciated by the destruction of a dock, though the claimant had no right to the use of the dock except as one of the public; *Metropolitan Board of Works* v. *M'Carthy*, 43 L. J. C. P. 385. The owner of a wharf deprived of free access to the Thames and the means of unloading barges at his wharf, was held entitled to compensation; *Macey* v. *Metropolitan Board of Works*, 33 L. J. Ch. 377; so where a road was narrowed and the property depreciated; *Beckett* v. *Midland Railway Company*, 37 L. J. C. P. 11; access to a house impeded by the raising of the level of a street; *R.* v. *St. Lukes, Chelsea*, L. R. 7 Q. B. Ex. Ch. 148; houses depreciated by the diversion of a road, *Chamberlain* v. *Crystal Palace Company*, *supra*:

for the destruction of ancient lights; *D. Bedford* v. *Dawes*, 44 L. J. Ch. 549; *Eagle* v. *Charing Cross Railway Company*, 36 L. J. C. P. 297; and see further *Biggs* v. *Corporation of London*, L. R. 15 Eq. 376; *R.* v. *Wallasey Local Board of Health*, L. R. 4 Q. B. 351; *R.* v. *Midland Railway Company*, 2 Railway Ca. 1; *R.* v. *Nottingham Waterworks Company*, 6 A. & E. 355; *Caledonian Railway Company* v. *Ogilvy*, 2 Macq. H. L. Rep. 229; *Winterbotham* v. *E. Derby*, 36 L. J. Ex. 194; *Holt* v. *Gas Light and Coke Company*, L. R. 7. Q. B. 728; *Grand Junction Canal Company* v. *Shugar*, L. R. 6 Ch. 483; *Edwards* v. *Great Eastern Railway Company*, L. R. W. N. (1878), p. 93.

It was decided, on appeal to the House of Lords from the judgment of the Ex. Ch. reversing the decision of the Queen's Bench, that where the plaintiff was owner of a house, &c., with an exclusive easement over a causeway and jetty, and under powers conferred by the Thames Embankment Act, 1862, a roadway was substituted for a river frontage, he was entitled to compensation, and that the loss of the use of the river frontage and the consequent loss of privacy and the increase of dust and noise occasioning deterioration of the property, were subjects for the arbitrator to consider in deciding the amount of compensation; *D. Buccleuch* v. *Metropolitan Board of Works*, L. R. 3 Ex. 306; 5 Ex. (Ex. Ch.) 221; 5 E. & Ir. App. 418. Where an act containing compulsory powers incorporates the whole of the Lands Clauses Consolidation Act, a right of compensation is, without any other enactment, conferred upon persons interested in lands injuriously affected by the exercise of statutory powers; *R.* v. *St. Luke, Chelsea*, 40 L. J. Q. B. 305; and see decision in *Ferrar* v. *Sewers Commissioners of London*, 38 L. J. Ex. 17; Ex. Ch. 102; *Baker* v. *Vestry of St. Marylebone*, 23 W. R. 848.

But where the occupier of premises near the Thames had been accustomed to draw water from the river, and bring his barges into a draw dock as a public right only and not as a right attached to the premises, and had been obstructed by the Thames Embankment works, he was held not entitled to compensation; *R.* v. *Metropolitan Board of Works*, 38 L. J. Q. B. 20; L. R. 4 Q. B. 358.

Loss of trade occasioned by the obstruction of a highway during the execution of works of a railway company, is not an injuriously affecting of the tradesman's interest in his premises entitling him to compensation; *Rickett* v. *Metropolitan Railway Company*, 36 L. J. Q. B. 205; overruling *Senior* v. *Metropolitan Railway Company*, 2 H. & C. 258; see observations of *Lord Westbury* and the other judges who dissented from this judgment. See also *Cameron* v. *Charing Cross Railway Company*, 33 L. J. C. P. 313, where it had been decided that this species of injury was the subject of compensation, but the decision was reversed on appeal to Ex. Ch. 13 W. R. 300, 455. There was no right to compensation for damage caused by vibration, after the construction of the works, *Brand* v. *Hammersmith Railway Company*, 36 L. J. Q. B. 139, affirmed by H. L., diss. *Lord Cairns* 38 L. J. Q. B. 265; nor for inconveniences caused by a level crossing; *Caledonian Railway Company* v. *Ogilvy*, *supra*; nor for diminished amenity of residence from being overlooked; Re *Penny*, *supra*; nor for temporary inconvenience by a hoard during the execution of works, unless the hoard was kept up for an unreasonable time; *Herring* v. *Metropolitan Board of Works*, 34 L. J. C. P. 224; nor for subsequent subsidence where the claimant had accepted a sum as compensation for all damage resulting from a railway; *Crofts* v. *London & North Western Railway Company*, 3 B. & S. 436; nor for loss from the discontinuance of the traffic of a ferry in consequence of the erection of a railway bridge; *Hopkins* v. *Great Northern Railway Company*, L. R. 2 Q. B. D. (C. A.) 224, overruling *R.* v. *Cambrian Railway Company*, L. R. 6 Q. B. 264; 40 L. J. Q. B. 169. There is no right to compensation for indirect injury resulting from the diversion of traffic, but there is such a right for direct structural injury; *Bigg* v. *Corporation of London*, L. R. 15 Eq. 376; nor for a reduction of profits during the

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interval between notice and taking possession; *R.* v. *Vaughan*, 38 L. J. M. C. 49.

Where the metropolitan commissioners of sewers had made a sewer in a public road, thereby tapping certain underground springs, and preventing them from entering a pond, &c., belonging to the prosecutor, it was held in a *mandamus* to the metropolitan board, to whom the liabilities of those commissioners had been transferred, on the authority of *Chasemore* v. *Richards*, 29 L. J. Ex. 81, that the prosecutor had no right of action in respect of such injury independently of the statute, and consequently was not entitled to compensation either under section 50 or section 69 of the Metropolitan Sewers Act, 11 & 12 Vict. c. 112; *R.* v. *Metropolitan Board of Works*, 32 L. J. Q. B. 105, distinguished from *Hodgkinson* v. *Ennis*, 32 L. J. Q. B. 231; and see *Grand Junction Canal Company* v. *Shugar*, L. R. 6 Ch. 483. In *Chasemore* v. *Richards*, 29 L. J. Ex. 81, it was decided that no action would lie for damage of this nature, and that the owner of an ancient mill could not maintain an action against the owner of adjacent land who had dug a well on his own land and diverted the underground waters not known to flow in a defined channel, which otherwise would have percolated into the river; and see *New River Company* v. *Johnson*, E. & E. 435. Water which diffuses itself over an indefinite surface is not the subject matter of a right by user. *Briscoe* v. *Drought*, 11 Ir. Com. Law R. 250, in error. But where the sewers commissioners had incurred liability, the metropolitan board were held liable to make compensation, though the liability was not known when the powers of the commissioners were determined, and the claim was not made for several years; *Pettiward* v. *Metropolitan Board*, 34 L. J. C. P. 301. See an able exposition of the law relating to this subject, with a comprehensive summary of the decisions, in *Eyre Lloyd's* Law of Compensation, chap. V, 4th ed.

In an action for compensation it is a good plea that the lands were not injuriously affected, *Read* v. *Pimlico Railway Company*, 32 L. J. Ex. 167.

For acts which, notwithstanding the statute containing or incorporating the compensation clause, remain wrongful, the remedy by action is not taken away; *Broadbent* v. *Imperial Gas Company*, 26 L. J. Ch. 276; *Hely* v. *Todmorden Local Board of Health*, 44 L. J. C. P. 19; *Biscoe* v. *Great Eastern Railway Company*, L. R. 16 Eq. 636; *Brine* v. *Great Western Railway Company*, 31 L. J. Q. B. 101; *Bramlen* v. *Metropolitan Board of Works*, 13 C. B. (N.S.) 768; *Clothier* v. *Webster*, 9 Jur. (N.S.) 23. As to the liability of drainage commissioners for damage by flooding, see *Collins* v. *Middle Level Commissioners*, L. R. 4, C. P. 279. An offer of a sum in respect of lands injuriously affected must be unconditional; an offer of one sum for compensation and costs is bad; *Bush* v. *Trowbridge Waterworks*, L. R. 10 Ch. 459.

Where the proceeding for want of compliance with a formality prescribed by an Act of parliament became an unlawful one, an action lay; *Brownlow* v. *Metropolitan Board of Works*, 31 L. J. C. P. 140, and not the less so because the contractor may also be responsible for his own acts or defaults; *Ibid.* But a public body using ordinary caution is not responsible for damage arising from extraordinary causes; *Blyth* v. *Birmingham Water Company*, 11 Ex. 781; see *Nichols* v. *Marsland*, L. R. 10 Ex. 255, and *Fletcher* v. *Rylands*, L. R. 3 H. L. 330. Or for damage arising from the negligence of the plaintiff or of strangers; *Holden* v. *Liverpool Gas Company*, 3 C. B. 1. See as to responsibility of a contractor to commissioners of sewers for an injury resulting from the neglect to fence a trench, where access to a mews was obstructed by the works; *Clayards* v. *Dethick*, 12 Q. B. 439; and *Jones* v. *Bird*, 5 B. & Ald, 837, 844, as to the sufficiency of notice to secure property on the execution of sewerage works and the liability to shore up houses. In *Ward* v. *Lee*, 26 L. J. Q. B. 142, it was decided that the contractors of the metropolitan commissioners of sewers, who had broken into an old drain and damaged the property of the plaintiff, but who were found by the jury to have acted *bonâ fide* in carry-

thereby as hereinafter provided (*a*), and all sewers and works from time to time made by the said board, shall vest in them; and the said board shall cause the sewers vested in them to be constructed, covered, and kept so as not to be a nuisance (*b*) or injurious to health, and to be properly cleared, cleansed, and emptied, and for the purpose of clearing, cleansing, and emptying the same they may con- Section 135.

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ing out the orders of the commissioners, were, by section 28 of the 11 & 12 Vict. c. 112 (the Metropolitan Sewers Act, now expired), absolved from personal liability; but that the commissioners were liable for such an injury, and the damages that might be recovered against them would be payable out of the funds at their disposal under section 125 of the statute. See action against a district board constituted under this Act for neglecting to keep a sewer clean, whereby plaintiff's premises were flooded, *Meek* v. *Whitechapel Board of Works*, 2 F. & F. 144. See cases cited in note to section 69, *ante*.

(*a*) See section 225 as to settlement and recovery of compensation.

(*b*) In the *Attorney-General* v. *The Metropolitan Board of Works*, 27 J. P. Ch. 597, on a bill filed to restrain the defendants from discharging sewage into the river Lea during the construction of the main drainage works, Vice-Chancellor *Sir W. P. Wood*, in the course of his judgment, said: "My personal impression upon this interlocutory application is that the defendants have no authority under their Acts to do what they have done. Section 135 of the 18 & 19 Vict. c. 120, does not, in my opinion, give them power to turn the sewage of a district into any navigable river or stream." And further on he says, "I apprehend the distinction in these cases is between nuisances which are the necessary result of the works authorized by the Act, and those nuisances which are not such necessary result, but, as in this case, only arise from some accidental circumstance, such as the failure of the contractor. Here the nuisance complained of is by no means the necessary result of the execution of the main drainage works, and I cannot hold that it is covered or authorized by anything in the Acts under which the defendants derive their powers." But for the purposes of main drainage operations the metropolitan board had powers, in addition to and beyond those adverted to in the judgment in the foregoing case. By the 21 & 22 Vict. c. 104, s. 1, they were to carry on and complete, with all convenient speed, according to such plan as to them might seem proper, the necessary sewers and works for the improvement of the main drainage, and for preventing, as far as might be practicable, the sewage of the metropolis from passing into the Thames within the metropolis, and (section 2) for the purposes of the Act they were empowered to construct any work through, along, over, or under, the bed, and soil, and banks and shores of the river Thames. These powers were subject to the condition (section 27) that no such works below low water mark which might interfere with the navigation of the river should be executed without having been previously approved of by the admiralty, and (section 28) by the conservators of the Thames. The main drainage works and the enactments under which they were executed, necessarily contemplated an outfall into the Thames. The Rivers Pollution Prevention Act, 1876, 39 & 40 Vict. c. 75, subjecting to penalties every person who should cause to fall, or flow, or to be carried into any stream any solid or liquid sewage matter, recognises that fact by providing, section 18, that nothing in or done under the Act should affect any outfall or other works of the Metropolitan Board of Works (although beyond the metropolis). And the same outfalls are referred to in the provisions of the Thames Navigation Act, 1870, which cast upon the board the duty of keeping the Thames free from such banks or other obstructions to the navigation as may have arisen or may arise from the flow of sewage at their outfalls for the time being into the river; and similar savings as regards these outfalls are contained in other acts.

As to proceedings to restrain district boards from executing drainage

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works so as to create a nuisance, see *Attorney-General* v. *Hackney District Board*, L. R. 20 Eq. 626; and *Cator* v. *Lewisham District Board*, 5 B. & S. 115, referred to in note to section 69, *ante*.

As to the general law upon the subject of nuisances occasioned by the discharge of sewage and other matters into streams, it has been laid down in numerous cases that public bodies have no right to pour sewage into streams and watercourses so as to cause a nuisance or injuriously affect the rights of individuals; and where they have done so they have been restrained by injunction, and that not only where they have created a nuisance by pouring sewage into pure streams, but where streams have for many years been to a certain extent contaminated, but the works complained of have materially increased the pollution.

In *The Attorney-General* v. *The Town Council of Birmingham*, 4 Kay & J. 528, a local board of health were restrained from carrying sewage into a river to the prejudice of the rights of private individuals; and in *Goldsmid* v. *The Improvement Commissioners of Tunbridge Wells*, L. R. 1 Eq. 161; 1 Ch. 349, where the sewage of a town had for many years drained into a stream passing through the plaintiff's land, but subsequently, by the increase of the sewer, the stream became perceptibly polluted, the decree of the master of the rolls restraining the commissioners from draining into the stream so as to pollute the water to the injury of the plaintiff was affirmed. Where a local Act incorporating the Towns Improvement Clauses Act, 1847, empowered a corporation to drain into a specified river, it was held that section 107 of the latter Act, rendering persons responsible, notwithstanding the statute, for acts amounting to a nuisance at common law, was incorporated with the local Act, and prohibited such drainage into the river as would create a nuisance; *Attorney-General* v. *Mayor, &c., of Leeds*, 39 L. J. Ch. 25; L. R. 5 Ch. 583. See observation of the master of the rolls in *Smith* v. *Smith*, 44 L. J. Ch. 632.

In the *Attorney-General* v. *Richmond*, 35 L. J. Ch. 597, *Wood*, V. C., says, "No persons are entitled on the ground of ancient custom or privilege to make a river carry off the sewage through drains or to collect the whole into a mass and pour it in at one time in such a quantity that the river cannot perform its function of diluting it on its passage down to the lower riparian proprietors.

And see further as to the grounds on which the courts have proceeded in applications for injunctions to restrain nuisances from the pollution of streams and other causes; *Attorney-General* v. *Colney Hatch Lunatic Asylum*, 38 L. J. Ch. 265; *Attorney-General* v. *Corporation of Halifax*, 39 L. J. Ch. 129, and *North Staffordshire Railway Company* v. *Tunstall Local Board of Health*, 39 L. J. Ch. 131; *Holt* v. *Mayor of Rochdale*, 39 L. J. Ch. 761; *Attorney-General* v. *Luton Board of Health*, 2 Jur. (N.S.) 180; *Oldacre* v. *Hunt*, 1 Jur. (N.S.) 785; and see *Bidder* v. *The Local Board of Croydon*, 6 L. T. (N.S.) 779; and *Attorney-General* v. *Bradford Canal Company*, L. R. 2 Eq. 71.

But the courts have refused to interfere where the evidence showed that the nuisance complained of was trivial in its character or only temporary in duration. In *The Attorney-General* v. *Gee*, L. R. 10 Eq. 131, a bill and information filed to restrain a local board of health from discharging sewage into a river were dismissed with costs, principally on the ground that the injury proved was only trifling. In the *Attorney-General* v. *Corporation of Kingston-on-Thames*, 34 L. J. Ch. 481, an injunction to restrain the corporation from draining into the Thames was refused because there was no evidence of an existing or strongly probable nuisance. In *Attorney-General* v. *Cockermouth Local Board of Health*, L. R. 18 Eq. 172, where a local board discharged sewage into a river in contravention of the Local Government Amendment Act, 1861, an injunction to restrain them from infringing the Act was granted, though the bill seeking to make out a case of nuisance was dismissed.

In *Lillywhite* v. *Trimmer*, 36 L. J. Ch. 525, a bill filed to restrain a

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struct and place, either above or under ground, such reservoirs, sluices, engines, and other works as may be necessary (*a*), and may cause the sewage and refuse from such sewers to be sold or disposed of (*b*) as they may see fit, but so as not to create a nuisance (*c*), and the money arising thereby shall be applied towards defraying the expenses of such board (*d*).

Before works for intercepting the sewage are commenced, plans, &c., to be submitted to commissioners of works.

136 (*e*). Before the metropolitan board of works commence any sewers and works for preventing the sewage from passing into the Thames as aforesaid, the plan of the intended sewers and works for the purpose aforesaid, together with an estimate of the cost of carrying the same into execution, shall be submitted by such board to the commissioners of Her Majesty's works and public buildings; and no such plan shall be carried into effect until the same has been approved by such commissioners.

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local board from discharging sewage into a river, causing nuisance and injury to the plaintiff was dismissed, but without costs, the court finding that no material injury had accrued to the plaintiff, and that the nuisance, if any, had been to a great extent abolished since the filing of the bill; and the Vice-Chancellor, in delivering judgment, expressed his acquiescence in the law as laid down in the *Attorney-General* v. *Town Council of Birmingham*, 4 Kay & J. 528, *supra*, and followed in subsequent decisions. Under the Judicature Act, 1873, s. 89, a county court has, in actions within its jurisdiction, power to grant an injunction against a nuisance, and to commit to prison for disobedience thereto; *Ex parte Martin*, L. R. 10 Ch. D. 212.

(*a*) A local board of health was held not empowered by the 46th section of 11 & 12 Vict. c. 43 to enter upon the land of another person without his consent for the purpose of making a tank or reservoir for the reception of sewage, *Sutton* v. *Mayor of Norwich*, 27 L. J. Ch. 739.

(*b*) The 28 & 29 Vict. c. 121 (Loc.) (Metropolitan Sewage and Essex Reclamation Act 1865) authorized the incorporation of a company for utilising the sewage of the metropolis north of the Thames and other purposes. The time for completion was extended by the 29 & 30 Vict. c. 280 (Loc.) to 1866. See bill for an injunction by a local board of health against a sewage company complaining that the company's works were insufficient for treating the sewage successfully, and thereby occasioning a nuisance; *Nuneaton Local Board of Health* v. *General Sewage Company*, L. R. 20, Eq. 127.

By the Thames Navigation Act 1870, s. 20, the metropolitan board are required at their own expense to keep the Thames free from banks and obstructions arising from the flow of sewage at their outfalls, with power to dredge and remove banks and obstructions, subject to the approval of the conservators.

(*c*) Refer to note to section 135, *supra*, as to proceedings to restrain nuisances from sewage, &c. See 21 & 22 Vict. c. 104, s. 23, *post*, as to works and means for deodorizing sewage during the execution of works for the purification of the Thames. See section 24 as to execution of works so as not to create a nuisance, and section 31 as to proceedings by secretary of state on complaint of nuisance.

(*d*) See powers given to metropolitan board to take land for works for deodorization of sewage pending the execution of the main drainage works, 21 & 22 Vict. c. 104, s. 3, *post*.

(*e*) This clause was repealed by 21 & 22 Vict. c. 104, *post*, the first section of which directs the board to execute the works of main drainage "according to such plan as to them shall seem proper," thus rendering the approval of the commissioners of works no longer necessary; see section 25 of last-named Act; and by the 9th section the commissioners of the treasury were authorized to appoint inspecting engineers to inspect the main drainage works executed under this Act, and report to the commissioners in relation to the expenditure on such works.

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Metropolitan board may declare sewers to be main sewers, and take under their jurisdiction sewerage matters under jurisdiction of vestries and district boards.

137. In case it appear to the metropolitan board of works that any sewers in the metropolis not hereinbefore vested in such board ought to be considered main sewers, and to be under their management, it shall be lawful for such board, by an order under their seal, to declare the same to be main sewers, and thereupon the same shall vest in and be under the management of the said board; and it shall also be lawful for the said board by any such order to take under their jurisdiction and authority any other matters in relation to sewerage and to drainage with respect to which jurisdiction or authority is by this Act vested in any vestry or district board.

Metropolitan board to make orders for controlling vestries and district boards in construction of sewers, &c. (*a*)

138. The metropolitan board of works shall from time to time, in order to secure the efficient maintenance of the main and general sewerage of the metropolis, make such general or special order as to them may seem proper for the guidance, direction, and control of the vestries of parishes and district boards in the levels, construction, alteration, and maintenance and cleansing of sewers in their respective parishes or districts, and for securing the proper connexion and intercommunication of the sewers of the several parishes and districts and their communications with the main sewers vested in the said metropolitan board, and generally for the guidance, direction, and control of vestries and district boards in the exercise of their powers and duties in relation to sewerage; and all such orders shall be binding upon such vestries and boards.

Metropolitan board may direct appointments to be made for two parishes or districts jointly.

139. The metropolitan board of works, where it appears to them expedient that any officer or set of officers necessary for the purposes of this Act should act for a larger area than is comprised in one parish or district, or for parts of different parishes or districts, may, with the consent of the vestries or boards of such parishes or districts, direct that such vestries or boards shall unite in the appointment and removal of such officer or set of officers; and the said metropolitan board shall in such cases direct the mode in which the respective bodies or committees thereof shall act together for the purposes of every such appointment and removal, and the proportions in which the salary or salaries of such officer or officers shall be borne and paid by every such parish and district respectively.

Or may place a street in different parishes under the management of one vestry, or part of a parish under the management of vestry

140. It shall be lawful for the metropolitan board of works, where it appears to them that any street or line of street, being in more than one parish or district, should be placed under the exclusive management of one vestry or district board for the purposes of paving, lighting, watering, and cleansing, or any of them, or for the purposes of sewerage and drainage, or for all the purposes of this Act, to order that the same shall be under the management of such vestry or board accordingly; and it shall also be lawful for the said metropolitan board, where it appears to them that any part of any parish or district is so detached or situate that it would be convenient for the purposes of

(*a*) The 83rd section of 25 & 26 Vict. c. 102, *post*, empowers the metropolitan board to make bye-laws in relation to the matters enumerated in this section; and see section 45, *et seq.* of same Act, as to submitting plans to metropolitan board and other regulations in case of the construction of new sewers, branching of drains into sewers, abandonment, &c. of designs for sewers; and section 32 of 25 & 26 Vict. c. 102, *post*, as to compensation where sewers of different parishes are connected. There is no express provision for enforcing compliance. In *R.* v. *Walker*, 40 J. P. 231, it was decided that an indictment lay for disobedience to an order of commissioners made under the Epping Forest Acts.

sewerage or drainage that the same should be placed under the management of the vestry or district board of any adjoining parish or district, to order that such part shall, for such purposes be under the management of such vestry or district board.

Section 140. of adjoining parish (*b*).

141 (*c*). It shall be lawful for the metropolitan board of works from time to time to cause to be painted or affixed on a conspicuous part of some house or building at or near each end, corner, or entrance of every street in the metropolis the name of such street, and the board may, where more than one street in the metropolis is called by the same name, alter the name of any or all such streets, except one, to any other name which to such board may seem fit, and which may be approved by the commissioners of Her Majesty's works and public buildings; and before any name is given to any new street, notice of the intended name shall be given to the said board, and if there be any street in the metropolis called or about to be called by the same name, the said board may, by notice in writing, stating that there is already a street in the metropolis called or about to be called by the same name, and describing the locality thereof, given to the person by whom notice of such intended name was given to them, at any time within fourteen days after receipt of such last-mentioned notice, object to such intended name; and it shall not be lawful to set up any name to any new street in the metropolis until the expiration of fourteen days after notice thereof has been given as aforesaid to the said board, or to set up any name objected to as aforesaid; and the owners or occupiers of houses and buildings in the several streets in the metropolis shall mark such houses or buildings with such numbers or names for the purpose of distinguishing the same as the said board may direct or approve and shall renew the numbers or names of such houses or buildings as often as they are obliterated or defaced; and if any occupier of any such house or building neglect for one week after notice from the said board to mark such house or building with such number or name as the said board may direct or approve, or to renew the number or name thereof as aforesaid, he shall be liable to a penalty of not exceeding 40*s*., and the said board may cause such number or name to be so marked or renewed, and recover the expense thereof from the owner of such house or building in manner hereinafter provided; and if any person wilfully or maliciously destroy, pull down, obliterate, or deface the name of any street in the metropolis, or the name or number of any house or building in any such street, or paint, affix, or set up any name to any street, or any name or number to any house or building, contrary to this

Metropolitan board to regulate naming of streets and numbering of houses.

(*b*) See section 160, as to orders by vestries for payment of expenses of executing the Act in the parts placed under their management under this provision and note to that section. The 25 & 26 Vict. c. 102, *post*, empowers the metropolitan board to place roadways, footways, &c., in different parishes or districts under the management of one vestry or district board, and to direct in what proportions the cost of constructing sewers, paving, lighting, &c., shall be borne.

(*c*) This section is repealed by section 87 of the Act, 25 & 26 Vict. c. 102, *post*, which re-enacts its provisions with certain modifications. Under this enactment it was held that the metropolitan board possessed the exclusive power of directing how houses should be numbered within the city of London; and the powers given to the commissioners of sewers for the city by 11 & 12 Vict. c. 163, were in that respect superseded by those more recently conferred upon the metropolitan board; *Daw* v. *The Metropolitan Board of Works*, 31 L. J. C. P. 223.

Section 141. enactment, he shall for every such offence forfeit a sum not exceeding 40*s.*; and it shall be lawful for the said board to cause such name or number so painted, affixed, or set up contrary to their direction to be obliterated or destroyed.

Register to be kept of alterations in names of streets.

142. The said metropolitan board shall keep a register of all alterations made by them in the names of streets, and such registers shall be kept in such form as to show the date of every such alteration, and the name of the street previous to such alteration as well as the new name thereof.

Buildings not to be brought beyond line of street.

143 (*a*). No building shall, without the consent in writing of the metropolitan board of works, be erected beyond the regular line of buildings in the street in which the same is situate, in case the distance of such line of buildings from the highway do not exceed thirty feet, or within thirty feet of the highway where the distance of the line of buildings therefrom amounts to or exceeds thirty feet, notwithstanding there being gardens or vacant spaces between the line of buildings and the highway; and in case any building be erected contrary to this enactment, it shall be lawful for the vestry or district board in whose parish or district such building is situate to cause the same to be demolished or set back (as the case may require), and to recover the expenses incurred by them from the owner of the premises in manner provided by this Act.

Power to metropolitan board to make improvements (*b*).

144. The metropolitan board of works shall have power to make, widen, or improve any streets, roads, or ways, for facilitating the passage and traffic between different parts of the metropolis, or to contribute and join with any persons in any such improvements as aforesaid, and to take, by agreement or by gift, any land, rights in land, or property, for the purposes aforesaid (or otherwise) for the

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(*a*) This section is repealed by 25 & 26 Vict. c. 102, s. 75, *post*, which contains a new set of regulations with respect to buildings beyond the *general* line, and see section 76 of same Act. Neither this nor the Metropolitan Building Act, 18 & 19 Vict. c. 122, contains any definition of the word "building," but under the latter Act it was held that a shop all wood, without footings or any brickwork for a foundation, thirteen feet high and as many wide, built on wooden joists laid on the ground without being let or fastened into the soil, and being capable of being removed in its entirety, was a *building* within the meaning of that Act; *Stevens* v. *Gourley*, 29 L. J. C. P. 1. It was decided under this provision, and the 3rd section of 19 & 20 Vict. c. 112, that the ecclesiastical commissioners were not empowered to erect a church beyond the regular line of buildings in a street; *Ecclesiastical Commissioners* v. *Vestry of Clerkenwell*, 30 L. J. 454, Ch. *on appeal*. Under this enactment it was decided that it was sufficient if there was a general uniformity in the line of buildings; *Tear* v. *Freebody*, 22 J. P. 707; *Robins* v. *Bury*, 25 J. P. 83. The removal of the materials in the former case was held to be a conversion. But see now 25 & 26 Vict. c. 102, s. 75, and see the cases referred to in notes to that section, *post*. Where a local board under Public Health Act 1875, did not within a month signify its disapproval of a plan for building, held it could not afterwards object where the building was executed in accordance with the plan; *Masters* v. *Pontypool Local Board of Health*, L. R. 9, Ch. D. 677; or pull down the building without giving the owner an opportunity of showing cause; *ibid.*

(*b*) By 19 & 20 Vict. c. 112, s. 10, the power of making application to parliament given to the metropolitan board by this section is declared to apply to applications to parliament for the purpose of parks, pleasure-grounds, places of recreation, &c. See 19 & 20 Vict. c. 112, s. 11, *post*,

improvement of the metropolis, on such terms and conditions as they may think fit; and such board, where it appears to them that further powers are required for the purpose of any work for the improvement of the metropolis or public benefit of the inhabitants thereof, may make applications to parliament (*c*) for that purpose, and the expenses (*d*) of such application may be defrayed as other expenses of the said board: [Provided always, that before the metropolitan board of works commence any such works the estimated expense whereof shall exceed fifty thousand pounds, the plan of such works, together with an estimate of the cost of carrying the same into execution, shall be submitted by such board to the commissioners of Her Majesty's works and public buildings; and no such plan shall be carried into effect until the same has been

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empowering vestries to take land by agreement or gift for pleasure grounds &c.; and section 72 of 25 & 26 Vict. c. 102, *post*, empowering vestries and district boards, with consent of metropolitan board, to effect improvements within their parish or district, and to borrow money for that purpose; and section 73, giving the same bodies powers under 57 Geo. 3, c. 29, for improving and regulating streets. See clauses, *post*, Appendix.

(*c*) See reference to the acts obtained by the metropolitan board for the purposes defined by this and the 10th section of 19 & 20 Vict. c. 112, in note to the last-named section *post*.

(*d*) The provisions contained in this and the 10th section of 19 & 20 Vict. c. 112, confer express power upon the metropolitan board to make applications to parliament directed to the object of obtaining further powers for the objects specified; and the special Acts for improvements promoted by the board, generally contain a provision for payment of the expenses of obtaining them as the costs or expenses incurred in the execution of the Metropolis Management Acts.

The general principles applicable to the law relating to the payment of expenses of parliamentary proceedings by corporations, local authorities, and other public bodies may be deduced from the following decisions:—

It was held in *Bateman* v. *Mayor of Ashton-under-Lyne*, 3 H. & N. 323, that a company incorporated for supplying a district with water, might lawfully apply to parliament for an extension of their powers, and contract for the supply of plans and estimates essential to the application. But commissioners under a local Act were held not entitled to defray out of their funds the expenses of obtaining another Act giving more extensive powers; *Attorney-General* v. *Andrews*, 2 McN. and Gordon, 225.

Commissioners of sewers may legally incur expenses in endeavouring to procure the rejection or modification of a bill in parliament for carrying out drainage likely to be injurious to their level, as litigation, &c. arising out of their duties within section 16 of 3 & 4 Will. 4, c. 22; *R.* v. *Commissioners of Sewers of Norfolk*, 15 Q. B. 549.

And commissioners for maintaining the banks of a river were held entitled to oppose a bill in parliament, the provisions of which they had grounds for believing would be injurious to the lands under their superintendence; *Bright* v. *North*, 2 Ph. 216.

And in an information to restrain a municipal corporation from applying the borough fund or raising a rate for the purpose of opposing a bill in parliament, the object of which was to interfere with the sewage and drainage of the town, it was held not a suit in which success was sufficiently probable to entitle the relator to an interlocutory injunction; *Attorney-General* v. *Mayor of Wigan*, 5 D. M. & G. 52.

A municipal corporation has a right under section 92 of the Municipal Corporation Act, or by the general law applicable to trustees, to defray out of the borough funds or rates the expenses of opposing a bill in parliament either attacking their existence as a corporation, their property, or only their rights, powers, and privileges; *Attorney-General* v. *Mayor of Brecon*, L. R. 10 Ch. D. 204; and as to what expenses incurred by a municipal

Section 144. approved by such commissioners; and no such works shall be commenced in cases where the estimated expense thereof shall exceed the sum of one hundred thousand pounds without the previous sanction of parliament (*a*).

Determination of Metropolitan Commission of Sewers.

Powers of metropolitan commissioners of sewers to cease (*b*).

145. From and after the commencement of this Act all duties, powers, and authorities vested in the metropolitan commissioners of sewers shall cease to be so vested; and in the meantime, and until such commencement, the metropolitan commission of sewers, and the Act of the session holden in the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve, and the Acts amending the same, shall continue in force.

Actions, &c., not to abate, but to continue for or against metropolitan board of works.

146. No action, suit, prosecution, or other proceedings whatsoever, commenced or carried on by or against the said commissioners, shall abate or be discontinued or prejudicially affected by the determination of the powers of such commissioners, but shall continue and take effect in favour of or against the metropolitan board of works in the same manner in all respects as the same would have continued and taken effect in relation to the said commissioners if this Act had not been passed, and the powers of the said commissioners had continued in full force; and all decrees and orders made, and all fines, amerciaments, and penalties imposed and incurred, respectively, previously to the commencement of this Act, shall and may

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corporation in opposing a bill in parliament were held not to be expenses necessarily incurred in carrying into effect the provisions of the Municipal Corporation Act within section 92 of the Act, refer to *R.* v. *Mayor of Sheffield*, L. R. 6 Q. B. 652.

A railway company incorporated by statute cannot, even with the approval of the shareholders, promote a bill in parliament involving an application of its funds to purposes foreign from those for which it was incorporated; *East Anglian Railway Co.* v. *Eastern Counties Railway Co.* 21 L. J. C. P. 23. See the case of an injunction restraining improvement commissioners from applying moneys produced by rates to the promotion of a bill in parliament for an extension of their district; *Attorney-General* v. *West Hartlepool Improvement Commissioners*, L. R. 10 Eq. 152; and refusal of injunction to restrain application for private Acts; *Steele* v. *Metropolitan Railway Co.*, L. R. 2 Ch. 237; *re* London, Chatham and Dover Railway Arrangement Act, L. R. 5 Ch. 671. See further *Attorney-General* v. *Guardians of Southampton*, 18 L. J. Ch. 393; *R.* v. *Worksop Local Board of Health*, 21 J. P. 451; *Wilmer* v. *Mayor of Liverpool*, 41 L. J. Q. B. 175; *Attorney-General* v. *Compton*, 1 Y. & Coll. 418; *Attorney-General* v. *Eastlake*, 17 Jur. 801; *Attorney-General* v. *Pearson*, 10 Jur. 651.

See further as to costs of applications to parliament by public bodies and payment of costs of legal proceedings out of rates, &c., *Roberts* v. *Mayor of Sheffield*, L. R. 6 Q. B. 652; *Attorney-General* v. *West Hartlepool Improvement Commissioners*, L. R. 10 Eq. 152; *Wilmer* v. *Mayor of Liverpool*, 41 L. J. Q. B. 175; *Attorney-General* v. *Pearson*, 10 Jur. 651; *R.* v. *Mayor of Warwick*, 15 L. J. Q. B. 306; *R.* v. *Mayor of Tamworth*, 19 L. T. (N. S.) 433.

(*a*) This proviso is repealed by 21 & 22 Vict. c. 104, s. 25, *post*, and the approval of the commissioners of works and previous sanction of parliament in the cases specified are no longer necessary.

(*b*) The Acts relating to the metropolitan commissioners of sewers were the Metropolitan Sewers Act, 1848, 11 & 12 Vict. c. 112, and the continuing

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be enforced, levied, recovered, and proceeded for, and all administrative proceedings commenced previously to the commencement of this Act shall and may be continued, proceeded with, and completed, the metropolitan board of works being, in reference to the matters aforesaid, in all respects substituted in the place of the said commissioners.

Rates made by metropolitan commissioners of sewers to be recoverable under this Act (*c*).

147. All rates made by the said commissioners previously to the commencement of this Act, or so much thereof as may not have been levied and paid, shall be levied by and paid to the metropolitan board of works, and such board shall have the same rights and remedies in all respects in relation thereto as would have been had and might have been exercised by the said commissioners; but all such rates respectively shall, so far as circumstances admit, be applied to the same purposes as the same would have been applicable to in case the powers of the said commissioners had continued in force, and shall for the purposes of such application (where the circumstances so require) be paid over by the metropolitan board of works, or by their order, to the vestry or district board having the management of the sewers in any parish or district under this Act, or as such vestry or board may direct.

Property vested in metropolitan commissioners

148. All property, matters, and things whatsoever vested in the metropolitan commissioners of sewers, except such sewers as are hereby vested in any vestry or district board, and except such sewers as are not within the limits of the parishes and places mentioned in the schedule to this Act, shall be vested in the metropolitan

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and amending Acts, 12 & 13 Vict. c. 93, 14 & 15 Vict. c. 75, 15 & 16 Vict. c. 64, 16 & 17 Vict. c. 125, 17 & 18 Vict. c. 111. An Act was also passed in 1855, 18 Vict. c. 30, giving certain special powers in relation to expenditure on house drainage. All have now expired. The first of the above-named Acts incorporated 23 Hen. 8, c. 5, with certain exceptions, but none of those provisions are incorporated with the present Act, but the powers of the board and vestries constituted by it are contained in substantive enactments. The 182nd section, however, preserves to the metropolitan board the powers conferred by the first of the above Acts in relation to improvement rates. The limits of the metropolitan sewers commission very materially differed from those of the metropolis, as defined by the present Act. See, as to the latter, interpretation of the word "metropolis," section 225. The metropolitan commission of sewers which was issued under the power contained in the 1st section of 11 & 12 Vict. c. 112, included the limits of the commissions commonly known as those of Westminster and part of Middlesex, the Holborn and Finsbury, the Poplar and Blackwall, the Tower Hamlets, Saint Katherine's, the Surrey and Kent, and the Greenwich. The first metropolitan commission, issued in January, 1849, included within it, under a provision contained in the 1st section of 11 & 12 Vict. c. 112, the parts subject to the jurisdiction of the commissioners acting under 5 Geo. 4. c. 100, the Regent's Park, Regent Street, &c., issued in October, 1849, and the second added to its other districts the parish of Chiswick.

Those commissioners did not deal with the whole of the area comprised within the foregoing limits, but confined the exercise of their power to what was designated their "active jurisdiction," which was divided into districts and levels, in conformity with the 34th and 35th sections of the Act of 1848.

(*c*) See action brought by the metropolitan board to recover arrears of rates due to the metropolitan commissioners of sewers, *Metropolitan Board of Works* v. *Vauxhall Bridge Co.*, 26 L. J. Q. B. 253, and observations in note to section 161.

Section 148. of sewers (except sewers transferred to vestries and district boards) transferred to the metropolitan board of works.

board of works; and all persons who then owe any money to the said commissioners of sewers, or to any person on behalf of such commissioners, shall pay the same to the metropolitan board of works, or as they may direct; and all moneys then due and owing by or recoverable from the said commissioners shall be paid by or recoverable from the metropolitan board of works; and all contracts, agreements, bonds, covenants, and securities (*a*) theretofore made or entered into with or in favour of or by the said commissioners, and all contracts, agreements, bonds, covenants, and securities made or entered with or in favour of or by any former or other commissioners, which under the said Act of the eleventh and twelfth years of Her Majesty were to take effect in favour of, against, and with reference to the said metropolitan commissioners of sewers, and are now in force, shall take effect and may be proceeded on and enforced, as near as circumstances admit, in favour of, by, against, and with reference to the metropolitan board of works, as the same would have taken effect and might have been proceeded on and enforced in favour of, by, against, and with reference to the said metropolitan commissioners of sewers if this Act had not been passed, and the powers of such commissioners had continued in full force (*b*), and any retiring pension or allowance granted under section twenty-seven of the said Act of the eleventh and twelfth years of Her Majesty shall continue payable on the like terms by the said metropolitan board of works (*c*).

Auxiliary Powers common to the Metropolitan Board of Works and to Vestries and District Boards.

Power to boards and vestries to enter into

149. The metropolitan board of works, and every district board and vestry, may enter into all such contracts as they may think necessary for carrying this Act into execution; and every such contract for works (*d*) or materials whereof the value or amount exceeds

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(*a*) See special provision for payment of mortgages, &c., of metropolitan board, section 181, *post*.

(*b*) The metropolitan board were held liable to pay compensation for damage from sewerage works executed under the metropolitan commissions of sewers, though no claim was made during the existence of those commissions or till several years afterwards; *re Arbitration of Pettiward* v. *Metropolitan Board of Works*, 34 L. J. C. P. 301.

(*c*) The provision referred to authorized the commissioners to order the payment of the pension or allowance on such terms and out of such funds under their disposal as they thought fit. See 213th section of the present Act, as to retiring pensions to officers of metropolitan commissioners not continued in office by metropolitan board, &c., and the Superannuation Allowances to Officers of Boards and Vestries Act, 1866, *post* appendix, empowering the metropolitan and district boards and vestries to award compensation to officers.

(*d*) Under the 85th section of the repealed statute 11 & 12 Vict. c. 63 (Public Health Act, 1848), in which the language was very similar to that used in the present provision, it was decided that the section was not merely directory but created a condition, and that a contract by a local board by resolution not under seal was void; *Frend* v. *Dennett*, 27 L. J. C. P. 314; 4 Jur. (N.S.) 897. The general rule is, that all contracts by a corporation must be under their common seal, subject to certain exceptions in the case of contracts of a comparatively unimportant character, such as hiring a cook, or appointing a bailiff. Further exceptions to the rule have been introduced in the case of contracts by trading corporations for carrying on their trade, for works or services incidental and necessary to the pur-

£10 shall be in writing or print, or partly in writing and partly in print, sealed with the seal of the board or vestry; and every contract so entered into, and duly executed by the other parties thereto, shall be binding on the board or vestry and their successors, and upon all other parties thereto: Provided always, that it shall be lawful for any such board or vestry to compound with any contractor or other

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contracts for carrying Act into execution.

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poses of the corporation, contracts which from their nature cannot be under seal, contracts of urgency, &c. See *South of Ireland Colliery Company* v. *Waddle*, L. R. 4 C. P. 617, and *Reuter* v. *Electric Telegraph Company*, 26 L. J. Q. B. 46. It is, however, difficult to apply those rules with certainty, nor is it quite practicable to reconcile the decisions of the courts upon the subject. Most of the authorities were reviewed in the following cases:—*Mayor of Ludlow* v. *Charlton*, 6 M. & W. 815; *Smart* v. *West Ham Union*, 24 L. J. Ex. 201; and see cases in Equity, *Kirk* v. *Bromley Union*, 2 Ph. 640; and *Crampton* v. *Varna Railway Company*, L. R. 7 Ch. 562; *Paine* v. *Strand Union*, 8 Q. B. 326; *Homersham* v. *Wolverhampton Water Works Company*, 6 Ex. 137; *Kirk* v. *Bromley Union*, 12 Jur. 85; *Lamprell* v. *Guardians of Billericay*, 18 L. J. Ex. 282; *London Dock Company* v. *Sinnott*, 8 Ell. and B. 347. Those authorities show that by the absence of a seal a contract is invalidated. See also *Ernest* v. *Nicholls*, 6 H. L. Ca. 40; *Austin* v. *Guardians of Bethnal Green*, L. R. 9 C. P. 91; and *Mayor of Kidderminster* v. *Hardwick*, L. R. 9 Ex. 13. In the following cases the contracts were held binding notwithstanding they were not under seal; *Sanders* v. *Guardians of St. Neot's Union*, 8 Q. B. 810; *Clarke* v. *Guardians of Cuckfield Union*, 21 L. J. Q. B. 349; *Haigh* v. *Guardians of North Brierley Union*, 28 L. J. Q. B. 62; *Nicholson* v. *Bradfield Union*, L. R. 1 Q. B. 620; *South of Ireland Colliery Company* v. *Waddle, supra*; *Wells* v. *Mayor of Kingston-upon-Hull*, L. R. 10 C. P. 402; and *Goodyear* v. *Mayor of Weymouth*, 35 L. J. C. P. 12. Where the defendants, a local board of health and urban authority under the Public Health Act, 1875, verbally directed their surveyor to employ plaintiff to prepare plans for new offices, and the plans were prepared and approved by the defendant, but there was no contract under seal, nor any ratification under seal of the acts of the surveyor, nor any resolution of the board authorizing the preparation of the plans, the contract could not be enforced; *Hunt* v. *Wimbledon Local Board of Health*, L. R. 3 C. P. D. 208.

Where a local board entered into a contract for works not under seal, but without obtaining an estimate from their surveyor, as required by the 85th section of the Public Health Act, 1875, it was decided that the provision was only directory, and the contract binding; *Nowell* v. *Mayor of Worcester*, 9 Ex. 457; and see *Cunningham* v. *Local Board of Health of Wolverhampton*, 7 Ell. & Bl. 107; *Sudlow* v. *Worthington*, 2 B. & S. 508.

A municipal corporation held not liable for the costs of opposing a bill in Parliament, where the solicitor's retainer was not under seal; *Sutton* v. *Spectacle Makers' Company*, 3 Cox Mag. Ca. 28.

Where the seal of a company acting under the Commissioners' Clauses Act, 1845, was affixed to a contract without lawful authority, no liability was incurred; *D'Arcy* v. *Tamar, &c., Railway Company*, L. R. 2 Ex. 158.

See circumstances amounting to evidence of the personal liability of the chairman of a local board of health for works executed by a contractor not included in his contract with the board; *Mountstephen* v. *Lakeman*, 36 J. P. 261.

In an action by a contractor on a contract with a municipal corporation it was decided that there was no implied contract by the defendants that the plans were practicable, and that the plaintiff's only remedy was to proceed for the extra expenses; *Thorn* v. *Lord Mayor of London*, L. R. 9 Ex. 163; 10 Ex. 112. In a contract for works, including alterations, it was held that no condition was implied that the alterations might reason-

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Power to compound for penalties in respect of breach of contracts.

person in respect of any penalty incurred by reason of the non-performance of any contract entered into as aforesaid, whether such penalty be mentioned in any such contract or in any bond or otherwise, for such sum of money or other recompense as to the board or vestry may seem proper.

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ably be completed within the time; *Jones* v. *St. John's College, Oxford*, 40 L. J. Q. B. 80; and see *Cox* v. *Midland Counties Railway Company*, 3 Ex. 270. As to penalties for non-completion of contract within the stipulated time, see *Duckworth* v. *Alison*, 1 M. & W. 412; *Holme* v. *Guppy*, 3 M. & W. 387; *M'Intosh* v. *Midland Counties Railway*, 14 M. & W. 548; and see *Thornhill* v. *Neate*, 2 L. T. (N.S.) 539. Refer to *Ex parte Capper*, L. R. 4, Ch. D. (C. A.) 724, where the contract provided for payment of a sum as liquidated damages in case of the non-completion of the works within the time limited, and it was held on the facts that the sum was in the nature of a penalty. See a suit by a party to whom the contractor had assigned his contract, and who completed the works, *Aspinall* v. *London and North Western Railway Company*, 11 Hare, 325; and where the works were finished by the administrator of the contractor after his death; *Crosthwaite* v. *Gardner*, 21 L. J. Q. B. 356. Where a contract empowered a company after notice to take possession of the plant, and they acted on the notice, no relief could be obtained in equity; *Ranger* v. *Great Western Railway Company*, 5 H. L. Ca. 72; and as to the form of such a notice, see *Pauling* v. *Mayor of Dover*, 24 L. J. Ex. 128. See as to the effect of bankruptcy of contractor on right of employer to take possession of the plant, *Rouch* v. *Great Western Railway Company*, 4 P. & D. 686; *Hawthorn* v. *Newcastle Railway Company*, 3 Q. B. 734, n. See in *Re Winter, Ex parte Bolland*, L. R. W. N. 1878, p. 67; *Dimes* v. *Grand Junction Canal*, 3 H. L. Ca. 759. In the case of *Walker* v. *London and North Western Railway Company*, L. R. 1 C. P. D. 518, it was decided, on the construction of a contract for building a dock, &c., that the right of insisting upon a forfeiture of material and implements could only be exercised within the time originally limited for the completion of the works; *Roberts* v. *Bury Improvement Commissioners*, distinguished, L. R. 4 C. P. 755. Engineers' certificates held not written orders within a building contract, requiring written orders for alterations or additions; *Tharsis Sulphur and Copper Company* v. *M'Elroy*, L. R. 3 App. Ca.: H. L. (Pt. 2) 1040. As to the sufficiency of certificate, see *Pashby* v. *Mayor of Birmingham*, 18 C. B. 2. And where under a similar contract the engineer's certificate was withheld, but it was found not to be fraudulently withheld, relief in equity was refused; *Scott* v. *Corporation of Liverpool*, 28 L. J. Ch. 230. A statement of claim by a contractor that the defendant, an architect, in refusing a certificate, was acting not *bonâ fide*, but in collusion with a building owner, was held to show a good cause of action; *Ludbrook* v. *Barrett*, 42 J. P. 23. See also *Scott* v. *Avery*, 25 L. J. Ex. 30; *Livingston* v. *Ralli*, 24 L. J. Q. B.; *Blackburn* v. *Smaith*, 2 Ex. 183. As to action against a surety where there have been deviations from the contract, see *Ware* v. *Calvert*, 7 A. & E. 143; and refer to *General Steam Navigation Company* v. *Rolt*, 6 C. B. (N.S.) 550; *Woodcock* v. *Oxford and Worcester Railway Company*, 1 Dr. 521. See implied covenant by vestry to employ a contractor during the time stipulated in contract; *Hornsby* v. *Vestry of St. Lukes, Chelsea*, 2 L. T. (N.S.) 176. Where a party had tendered for works to an incorporated company, which tender was accepted by them, but not under seal, and no further contract was executed, it was held that the company could not maintain an action against the party making the tender, as the company did not bring themselves within any of the exceptions to the general rule that a corporation aggregate can only be bound by contracts under the seal of the corporation; *London Dock Company* v. *Sinnott*, 27 L. J. Q. B. 129; 8 Ell. and Bl. 347.

Section 150.

Power to boards and vestries to purchase lands, &c., for the purposes of this Act.

150. It shall be lawful for the metropolitan board of works and every district board and vestry to purchase, or to take on lease for such term as they may think fit, any land, or any right or easement in or over any land which they may deem necessary or expedient for the formation or protection of any works which they are authorized to execute under this Act, also any offices and other buildings, yards, stations, or places for deposit of refuse, materials, and things, or any land for the erection and formation of such offices and other buildings, yards, stations, or places, for deposit; and also to contract for the purchase, removal, or abatement of any mill-dam, pound, weir, bank, wall, lock, or other obstruction to the flow of water, whereby sewerage or drainage is interrupted or impeded, and for the purchase of any land, or any right or easement in or over any land, which it may be necessary or expedient to purchase to prevent the obstruction of sewerage or drainage; and also to purchase or take on lease as aforesaid the whole or any part of any streams or springs of water, or any rights therein, which it appears to them necessary to acquire and use for the purposes of cleansing sewers and drains, and the other purposes of this Act, or any land which is deemed by them advisable to purchase or take on lease for the purpose of drawing or obtaining water from springs, or by sinking of wells, and for making and providing reservoirs, tanks, aqueducts, watercourses, and other works, or for any other purpose connected with the works for obtaining such supply of water as aforesaid: Provided always, that nothing herein contained shall authorize the said metropolitan board, or any district board or vestry, to use or permit to be used any such works for the purpose of carrying water by supply pipes into any house or factory for domestic (*a*), manufacturing, or commercial purposes.

Certain provisions of 8 & 9 Vict. c. 18, incorporated with this Act.

151. For the purpose of enabling the said metropolitan board, and every district board and vestry, to obtain any land, or any right or easement (*b*) in or over any land, which they respectively may require for the purposes of this Act, "The Lands Clauses Consolidation Act, 1845, except the provisions of that Act with respect to the recovery of forfeitures, penalties, and costs, shall, subject to the provisions herein contained, be incorporated with this Act; and the provisions of the said Act so incorporated with this Act which would be applicable in the case of a purchase of any land, shall be applicable in the case of a purchase of a right or easement in or over any land;

(*a*) As to what use of water is included in the expression "domestic use," see *Busby* v. *Chesterfield Water and Gas Company*, 27 L. J. M. C. 174. It was decided that the New River Company was not bound to supply water for flushing sewers during the three hottest months of the year at fixed prices, according to their local Act, instead of at rates to be agreed on as provided by the 37th section of the Waterworks Clauses Consolidation Act; *Metropolitan Board of Works* v. *New River Company*, 41 J. P. 790.

As to effect of the want of the necessary statutory powers for the supply of water, see *Southwark and Vauxhall Waterworks Company* v. *Vestry of Richmond*. L. R. 3 Ch. D. 82. As to what amounts to a sufficient excuse for not supplying water refer to *Campbell* v. *East London Waterworks Company*, 36 J. P. 711; and proceedings by Local Board of Health under Public Health Act, 1848, to recover expense of supply of water to a house from the owner; *Cabellero* v. *Lewis*, 39 J. P. 615.

(*b*) The word "land" in the Lands Clauses Act does not include an easement; *Pinchin* v. *London and Blackwall Railway Company*, 24 L. J. Ch. 417.

Section 151. and for the purposes of this Act the expression "the promoters of the undertaking," wherever used in the said Lands Clauses Consolidation Act, shall mean the metropolitan board, or the district board or vestry, acting under the provisions of the said Act and this Act, as the case may be.

Lands not to be taken compulsorily

152. Provided always, that the provisions of the said Lands Clauses Consolidation Act, "with respect to the purchase and taking of lands otherwise than by agreement" (*a*), shall not be incorporated with this

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(*a*) The compulsory powers for purchasing and taking land given by this Act, and by the Main Drainage Act, 21 & 22 Vict. c. 104, made applicable to all works under that Act, and to certain works authorized by the Metropolis Management Amendment Act, 1862, and the Lands Clauses Consolidation Acts are, with certain specified exceptions, incorporated with the Thames Embankment Act, 1862, and similar powers are conferred upon the board by special Acts for the formation of new streets, parks, and other public improvements, and for various other purposes.

The powers for improving and regulating streets, and for the suppression of nuisances, given by 57 Geo. 3, c. 29, are by the 73rd section of the Metropolis Management Amendment Act, 1862, extended and made applicable to the metropolis, the effect of which is to confer upon vestries and district boards the compulsory power of purchase given by the 80th section of the former Act.

The decisions relative to compensation for damage to land, and proceedings injuriously affecting land, are referred to in the notes to section 135, *ante*.

Where a metropolitan vestry gave notice to treat for the purchase of premises required to improve a street, it was held that the fact that they were a public body did not exempt them from the obligation imposed by the notice, and that such notice was binding; *Birch* v. *Vestry of Marylebone*; 5 Cox Mag. Ca. 629; and see *R.* v. *Commissioners of Woods, &c.*, 17 L. J. Q. B. 341.

The making a tunnel under a building is a taking of part of the building; *Ramsden* v. *Manchester, &c., Railway Company*, 1 Ex. 723; and as to the "taking and using" a stream within 85th section of Lands Clauses Act and Waterworks Clauses Act, see *Bush* v. *Trowbridge Waterworks Company*, 44 L. J. Ch. 235, 645; and refer to *Stone* v. *Mayor of Yeovil*, 45 L. J. C. P. 657; *Ferrand* v. *Corporation of Bradford*, 20 Jur. (N.S.) 175.

Where the metropolitan board under the Thames Embankment Act filled up a portion of the river bed, depriving the owner of access to the river, it was decided that they were not taking any right or easement in lands, but that the owner's rights were only injuriously affected, giving a title to compensation; *Macey* v. *Metropolitan Board of Works*, 33 L. J. Ch. 377. So also where the land was only required for a temporary purpose, it was decided not to be a taking or using making it obligatory to comply with section 84 of the Lands Clauses Consolidation Act; *Temple Pier Company* v. *Metropolitan Board of Works*, 34 L. J. Ch. 262; and see *Ferrar* v. *Commissioners of Sewers of London*, 38 L. J. Ex. 17; Ex. Ch. 102.

A notice to treat is in general binding; *R.* v. *Hungerford Market Company*, 4 B. & Ad. 327; *Morgan* v. *Metropolitan Railway Company*, L. R. 3 C. P. 553; 4 C. P. (Ex. Ch.) 97; *Birch* v. *Vestry of St. Marylebone*, 5 Cox Mag. Ca. 629; *Steele* v. *Corporation of Liverpool*, 7 B. & S. 261; *Fotherby* v. *Metropolitan Railway Company*, L. R. 2 C. P. 188. But where the Commissioners of Woods, &c., gave a notice to treat under the Battersea Park Act, it was held that as they were acting in a public capacity on behalf of the executive government, the notice did not constitute a *quasi* contract enforceable by *mandamus*; *R.* v. *Commissioners of Woods, &c.*, 19 L. J. Q. B. 497.

See further as to effect of a notice to treat, *Grierson* v. *Cheshire Lines*

Act save for enabling the metropolitan board of works to take land or any right or easement in or over land, for the purpose of making any sewers or works for preventing the sewage or any part of the sewage within the metropolis from passing into the Thames in or near the metropolis, or otherwise for the purpose of the sewerage or drainage of the metropolis: Provided also, that no land, or right or easement in or over land, for the purposes aforesaid, shall be taken compulsorily by the said board, without the previous consent in writing of one of Her Majesty's principal secretaries of state.

Section 152. except by metropolitan board with consent of Secretary of State.

153. The metropolitan board of works, before applying for the consent of the secretary of state for taking land, or any right or easement in or over land, compulsorily, as aforesaid, shall publish once at least in each of four consecutive weeks, in one of the daily

Previous notice to be given (*b*).

Committee, L. R, 19 Eq. 83; *Watts* v. *Watts*, L. R. 17 Eq. 217; *Guest* v. *Poole, &c., Railway Company*, L. R. 5 C. P. 553; *Ystalyfera Iron Company* v. *Neath, &c., Railway Company*, L. R. 17 Eq. 142.

Where a company has compulsory power of taking land, the subsequent fixing of compensation and purchase money constitute a binding contract for sale and purchase; *Mason* v. *Stokes Bay Pier Company*, 32 L. J. Ch. 110.

Acts giving to a corporation compulsory power for the purpose of effecting public improvements, are not to be construed in the same strict manner as Acts giving like power to any body of adventurers, such, for example, as a railway company; *Galloway* v. *Corporation of London*, 1 H. L. 34; and as to what are lands taken "for the purposes of the Act." *Ibid.*, and see *Quinton* v. *Corporation of Bristol*, L. R. 17 Eq. 524. As to what lands are required to be taken, see *Governors of St. Thomas's Hospital* v. *Charing Cross Railway Company*, 30 L. J. Ch. 395; *Thomas* v. *Daw*, L. R. 2 Ch. 1; and what is not part of a manufactory within section 92 of Lands Clauses Consolidation Act; *Reddin* v. *Metropolitan Board of Works*, 31 L. J. Ch. 660, and refer to *Richards* v. *Swansea Improvement Company*, L. R. 9, Ch. D. 425.

(*b*) The course directed by this section is substituted for that prescribed by the 18th and subsequent sections of the Lands Clauses Consolidation Act, 8 & 9 Vict. c. 18, with respect to the service of notices on owners and occupiers. The rules as to the sufficiency of notice under the latter Act requiring an accurate statement of the situation and quantities of the lands and the correctness of the plans will be applicable. See *Sims* v. *Commercial Railway Company*, 1 Railway Ca. 431; and *Kemp* v. *London and Brighton Railway Company*, 1 Railway Ca. 495. A provisional order of the secretary of state, which is not valid till confirmed by Act of parliament, is not removable by *certiorari*; *Frewin* v. *Local Board of Health of Hastings*, 3 Cox Mag. Ca. 279.

Where the rights of the lord of the manor in respect of a common, had been conveyed to a company under the Lands Clauses Consolidation Act, but the compensation to the commissioners had not been settled in manner provided by the Act: Held, that any person whose right of common had been disturbed by the works of the company might maintain an action; *Stoneham* v. *London, Brighton and South Coast Railway Co.*, 41 L. J. Q. B. 1.

The occupiers of copyhold and freehold land, within the manor of Hackney, were held to have no claim to compensation as against the freeholders and copyholders either by custom or prescription; *Austin* v. *Amherst*, L. R. W. N. (1877), p. 270.

An interest in property created by an agreement entered into by the owner after a notice to treat has been served on him is not a subject for compensation under the Lands Clauses Act; *Re Marylebone Improvement Act, Ex parte Edwards*, L. R. 12 Eq. 389.

A landowner building on land after notice, cannot, under section 92 of the

Section 153. newspapers published in the metropolis, an advertisement describing the nature of the works in respect of which the land, right, or easement, is proposed to be taken, naming a place where a plan of the proposed works is open for inspection at all reasonable hours, and stating the quantity of land or the particulars of the right or easement that they require for the purpose of such works, and shall

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Lands Clauses Act compel a company to purchase the house as well as the land; *Littler* v. *Rhyl Improvement Commissioners*, L. R. W. N. (1878) p. 219.

Where land is subject to restrictions as in the case of consecrated ground, it cannot be valued as if applied to secular purposes; *Stebbing* v. *Metropolitan Board of Works*, L. R. 6 Q. B. 37.

A quarterly tenant at three months' notice has no right to compensation under section 18 of Lands Clauses Consolidation Act; *Syers* v. *Metropolitan Board of Works*, 10 Cox Mag. Ca. 588. See principle for estimating value in case of tenant for life and reversioner in a term of years; *Penny* v. *Penny*, L. R. 5 Eq. 227. See also *Re Metti's Estate*, L. R. 7 Eq. 72.

Where the actual interest of a tenant is less than a year, though the original term was longer, his compensation must be assessed before justices, and if he proceeds to arbitration, the award is void; *R.* v. *Great Northern Railway Co.*, 41 J. P. 197; and see *Tyson* v. *Lord Mayor, &c., of London*, 41 J. P. C. P. 6.

The jury cannot determine a question of right, but only as to the amount of compensation; *Re Hayne* 13 W. R. 492; *Brandon* v. *Brandon*, 34 L. J. Ch. 333; nor whether lands have been injuriously affected; *Horrocks* v. *Metropolitan Railway Co.*, 4 B. & S. 315; 10 Jur. (N.S.) 204. See *Read* v. *Victoria and Pimlico Railway Co.*, 32 L. J. Ex. 167; *R.* v. *Metropolitan Railway Co.*, 32 L. J. Q. B. 367; *Mortimer* v. *South Wales Railway Co.*, 28 L. J. Q. B. 129; *R.* v. *Metropolitan Commissioners of Sewers* 22 L. J. Q. B. 234; *Barber* v. *Grantham Railway Co.* 33 L. J. C. P. 193.

Where the umpire in an arbitration under the Lands Clauses Consolidation Act made his award in the form of a special case for the opinion of a superior court, it was held that he had no legal power to do so; *Rhodes* v. *Airsdale Drainage Commissioners*, L. R. 9 C. P. 508.

Where after the amount of compensation for premises taken by the metropolitan board compulsorily had been determined by an umpire, and the abstract of title had been accepted, the premises were burned down, it was decided that the vendor was entitled to receive the amount of the assurance from the company; *Collingridge* v. *Royal Exchange Assurance Co.*, 42 J. P. 118.

Several claimants under the City Improvements Act, 1847, were held entitled to have their claims assessed separately; *Abrahams* v. *Lord Mayor of London*, L. R. 6 Eq. 625. See *Cranwell* v. *Lord Mayor of London*, L. R. 5 Ex. (Ex. Ch.) 284; and *Starr* v. *Lord Mayor of London*, L. R. 7 Eq. 136.

A notice to treat under Lands Clauses Consolidation Act is not a contract which requires to be stamped as an agreement; *Rawlins* v. *Metropolitan Railway Co.*, 37 L. J. Ch. 824.

A notice to treat under section 18 of the same Act is not equivalent to a demand of possession under section 121; *R.* v. *Stone*, L. R. 1 Q. B. 529.

A railway company can only take advantage of the powers of entering on lands under the 85th section of the Act, where the necessity is such as to preclude them from following the slower mode of proceeding applicable to ordinary cases; *Field* v. *Carnarvon Railway Co.*, 37 L. J. Ch. 176; L. R. 5 Eq. 190; and as to what is included in a bond given under sections 63 and 85 of Lands Clauses Consolidation Act; *in re Neath, &c., Railway Co.*, L. R. 9 Ch. 263.

Where a company enter on land under section 85, they cannot compel the owner to produce his title; *Martin* v. *London Chatham, &c., Railway Co.*, 17 L. T. (N.S.) 487.

Where money was paid in under a bond under the Act, an affidavit by the

serve a notice on the owners or reputed owners, lessees or reputed lessees, and occupiers of the land intended to be taken, or of the land in or over which such right or easement is intended to be taken, such service to be made four weeks previously to the application to such secretary of state, and such notice shall state the particulars of the land, right, or easement so required, and that the metropolitan board are willing to treat for the purchase thereof, and as to the compensation to be made for the damage that may be sustained by reason of the proposed works. Section 153.

Power to dispose of lands or property not wanted (*a*).

154. The metropolitan board of works, and any district board or vestry, may sell and dispose of any land purchased by them under this Act, and any property whatsoever vested in them under this Act, which it may appear to them may be properly sold or disposed of; and for completing and carrying any such sale of any land into effect such board may make and execute a conveyance of the land sold and disposed of as aforesaid unto the purchaser, or as he shall direct, and such conveyance shall be under the seal of the said board or vestry; and the word "grant" in such conveyance shall have the same operation as by the said Lands Clauses Consolidation Act, 1845, is given to the same word in a conveyance of lands made by the promoters of the undertaking; and a receipt under the seal of the said board or vestry shall be a sufficient discharge to the purchaser of any such land or any other such property as aforesaid for the purchase money in such receipt expressed to be received; and the money arising from such sale of any land purchased under this Act, and (except as hereinafter otherwise provided) of any such property, shall be applied in aid of the rate out of which the expenses of the purchase of such land or providing such property have been or are authorized to be defrayed under this Act; and the money arising from the sale of any property vested in any such board or vestry under this Act, and which, before becoming so vested was vested in any commissioners or other body,

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trustees verifying the title was held sufficient; *Re Batty's Trust*, L. R. W. N. (1877), p. 212. See *Re Halsey*, L. R. W. N. 1870), p. 68. As to course to be taken where there were adverse claimants to money paid into court; *Metropolitan Board of Works* v. *Sant*, 38 L. J. Ch. 7; and as to investment of purchase money paid into court, see *Re Treacher's Settlement*, 5 Cox Mag. Ca.

The conservators of the Thames, in whom the bed and foreshore of the river are vested by Act of parliament, were held entitled to compensation for the portion of the river and foreshore on which were built the piers and abutments of the bridge; *Conservators of Thames* v. *Victoria Station, &c., Railway Co.*, L. R. 4 C. P. 59.

Section 1 of Lands Clauses Act, 1869, only applies to arbitration proceedings under the Lands Clauses Act, 1845, simply, and not to arbitrations which embrace matters which could not be a subject of arbitration under the Act of 1845, except by agreement; *Doulton* v. *Metropolitan Board of Works*, L. R. 5 Q. B. 333. See case of *Binney* v. *Metropolitan Board of Works*, mentioned in note (*o*), p. 269, of Eyre Lloyd's Law of Compensation, 4th ed., to the effect that the claimant could not, under section 225 of this Act, have a jury where the premises were only *injuriously affected*, if the metropolitan board objected.

(*a*) This power is not subject to the restrictions placed upon the alienation of corporate property by municipal corporations by 5 & 6 Will. 4, c. 76. s. 94, and 8 Vict. c. 18 (Lands Clauses Act), s. 15. See Arnold on Municipal Corporations, 2nd ed., p. 29, and section 175 of Public Health Act, 1875, as to the purchase and sale of lands by local authorities under that Act. The special Acts obtained by the metropolitan board contain express provisions with respect to the sale of land, &c.

Section 154. or in any officer of any commissioners or other body, or in any surveyor of highways, shall be applied in or towards the discharge of any debts or liabilities for the discharge whereof rates are by this Act authorized to be raised in the parish, or part, to the commissioners or other body for the management of the paving, lighting, or cleansing whereof such property may have belonged before the commencement of this Act, and, subject as aforesaid, shall be applied in aid of such rate to be raised under this Act in such parish or part as to the board or vestry disposing of such property may seem just; and any such board or vestry may let any land purchased by or vested in them under this Act, and which for the time being is not required for the purposes thereof, in such manner and on such terms as such board or vestry may see fit.

Owners of land may on sale reserve a right of pre-emption.

155. Provided always, that where any land or any right or easement in or over land is purchased by the said metropolitan board, or any district board or vestry, under this Act, it shall be lawful for the owners of or parties entitled to sell or convey such land, right or easement to reserve upon the sale thereof to such board or vestry in and by the conveyance such right of pre-emption to the person for the time being entitled to the land if any) from which the land so purchased was severed, or in or over which such right or easement is granted, as is provided by sections 128, 129, and 130 of the said Lands Clauses Consolidation Act (*a*); but, except where such right of pre-emption is so reserved, there shall be no such right, notwithstanding the incorporation of the said Land Clauses Consolidation Act with this Act.

Penalty for withholding property transferred to metropolitan board or any vestry or district board.

156. In case any person having the charge, control, or possession of any property, matters, or things vested in the metropolitan board of works, or the vestry of any parish, or any district board, by or under the Act, neglect or refuse to give up the same, on demand, to such board or vestry, or such person as they respectively may order, every person so offending shall, upon being convicted thereof before any two justices of the peace, for every such offence forfeit and pay, over and above the value of the property not given up, such sum not exceeding £5, as the said justices may think fit (*b*).

Regulations as to breaking up turnpike roads (*c*).

157. The metropolitan board of works, and any vestry or district board, may, where necessary for the purpose of executing any work authorized by this Act, open and break up any turnpike road, under and subject to the restrictions and provisions hereinafter contained; that is to say, seven days' previous notice, with a full description of any intended works, shall be left at the office of the commissioners or trustees of the road; and, except by the permission of the said commissioners or trustees, the traffic of the road shall not at one time be stopped or hindered along more than half of its width, nor, if the half left open be of less than the clear width of fourteen

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(*a*) See the Act, *post*, Appendix.

(*b*) As to recovery of penalty, see section 227, *post*. In *R.* v. *Just. of Norfolk*, 4 B. & Ad. 238, it was held to be discretionary with the justices whether they would or would not commit an overseer for failing to account; and see *Meyer* v. *Harding*, referred to in note to section 65, *ante*.

(*c*) This section is repealed by 25 & 26 Vict. c. 102, s. 33, *post*, which modifies the regulations for breaking up turnpike roads. See section 244, saving rights of commissioners of turnpike roads.

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feet, along more than one hundred yards in length ; and no alteration shall, except by such permission as aforesaid, be made in the inclination of any part of the road of more than one foot in sixty feet ; and all work shall be done under the superintendence of the surveyor of the said commissioners or trustees ; and the party doing the works shall cause all openings in the road to be effectually secured and fenced, and affix and maintain lights during the night near to the place where the ground is open, so as to prevent accidents ; and the said commissioners or trustees are hereby absolved from all liability in respect of any accident arising in consequence of such works ; and the party doing the works shall restore every road so opened or broken up to its original state as to surface and materials, and, in order to meet the future expenses consequent on the subsidence of materials newly filled in, shall pay to such commissioners or trustees, on demand, such sum as they shall require for such purpose, not exceeding 1s. for every superficial square yard, and, so far as the works affect the same, shall make good all drainage, paving of water channels, kerbs of footpaths, and other matters and things connected with the maintenance of the road ; and in default the surveyor of the said commissioners or trustees may cause the necessary work to be done ; and in all cases of expense incurred by any such surveyor, on the default of the party doing the works, such party shall pay such expense to the commissioners or trustees, on demand.

Provisions for defraying Expenses of Vestries and District Boards.

How sums to be raised by vestries and district boards for defraying their expenses (*d*).

158. Every vestry and district board shall, from time to time, by order under their seal, require the overseers (*e*) of their parish, or of the several parishes in their district, to levy and to pay over to the treasurer of such vestry or board, or into any bank in such order mentioned, and within the time or times thereby limited, the sums which such vestry or board may require for defraying the expenses of the execution of this Act (*f*) (and such orders may be made wholly or in part in respect of expenses already incurred or of expenses to be thereafter incurred) ; and every such vestry and board shall distinguish in their orders sums required for defraying expenses of constructing, altering, maintaining, and cleansing the sewers or otherwise connected with sewerage, and also, where the Act of the session holden in the third and fourth years of King William the

(*d*) Where parishes have been united into a district under this Act, the expense of keeping the pavements in repair, and every other expense of cleansing and lighting, should be charged on each parish according to its rateable value ; *The Overseers of the Poor of St. Botolph Without, Aldgate* v. *The Board of Works for the Whitechapel District*, 29 L. J. M. C. 228.

(*e*) By the 250th section the term "overseers" includes any persons authorized to make and collect, or cause to be collected, the rate for the relief of the poor in any parish. See *Christie* v. *Guardians of St. Luke's, Chelsea*, cited in note to section 161.

(*f*) By the Metropolitan Board of Works (Loans) Act, 1869, s. 24, it is enacted that when any vestry or district board require to raise any sum for the purpose of satisfying or replacing any sum expended in satisfying any precept of the metropolitan board, for the purposes of the consolidated rate, such vestry or district board shall distinguish in their order the sum to be levied for that purpose, and the sum (if any) required for other purposes of such vestry and district board. See the Act, *post*, Appendix.

Section 158. Fourth, chapter ninety, or any other Act by virtue whereof land is rated in respect of expenses of lighting at a less amount in proportion to the annual value thereof than houses, or is wholly exempted from being rated in respect of such expenses, is in force in any parish, or any part of any parish, at the time of the passing of this Act, distinguish, as regards such parish, or part, the sums required for defraying expenses of lighting their parish or district (*a*) from sums required for defraying other expenses of executing this Act; but every such vestry and board may cause to be raised as expenses connected with sewerage such portion of the expenses incident to the conduct of their business in relation to sewerage, in common with the conduct of their other business under this Act, as to such vestry or board may seem just: and the overseers or collectors, in the receipts to be given for the sums levied or collected by them, shall distinguish the rate in the pound required for sewerage expenses, and the rate required for the other expenses of this Act.

Vestries and boards may exempt parts not benefited by expenditure from payment (*b*).

159. Where it appears to any vestry or district board that all or any part of the expenses for defraying which any sum is by such vestry or board ordered to be levied as aforesaid have or has been incurred for the special benefit of any particular part of their parish or district, or otherwise have or has not been incurred for the equal benefit of the whole of their parish or district, such vestry or board may, by any such order, direct the sum or sums necessary for defraying such expenses or any part thereof to be levied in such part, or exempt any part of such parish or district from the levy, or require a

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(*a*) This requires the making of a lighting rate over the *whole* parish; *Overseers of the Parish of St. James, Westminster*, v. *Overseers of the Parish of St. Mary, Battersea*, 29 L. J. M. C. 26.

(*b*) In *Howell* v. *The London Dock Company*, 27 L. J. M. C. 177, it was held under this section that if part of the property of the London Dock Company had not equal benefit with the other property in the parish rated to the poor from paving expenses, the company were entitled to be relieved in respect of that part; and that the company were exempt from being rated in respect of profits not immediately connected with the use of any paved streets. In *R.* v. *The Great Western Railway Company*, 28 L. J. M. C. 59, *Erle*, J., objected to this decision being cited as an authority, and see *Overseers of St. Botolph* v. *Whitechapel District Board*, 29 L. J. M. C. 228, cited in note to section 158, *ante*. Where a district board have come to a decision that a party is not entitled to exemption, the court will not interfere; *West Middlesex Water Company* v. *Wandsworth District Board*, 22 J. P. 336. See as to maintenance of river wall, *Plumstead Board of Works* v. *the Commissioners of Sewers, Lombard's Wall, &c.*, cited in note to section 70, *ante*. It is believed that the last-named board have issued their order to the overseers of the poor to levy and pay over to the credit of the board the sum required for defraying the expenses of cleansing and maintaining the sewers in the low lying or marsh lands of their parish, it being alleged that such expenses had been incurred for the special *benefit* of the part of their parish known as P. Marshes. Orders have also been made under this enactment by the Greenwich District Board on the overseers of the parish of Greenwich for payment of sums expended by the board in repairing the wall of the Thames protecting the marsh lands, requiring them to raise the same by a rate on the owner and occupier of the lands and premises defined in the order. As to what expenses incurred by a drainage board under 24 & 25 Vict. c. 153, are properly the subject of a general rate and not of a special rate on owners, refer to *Griffiths* v. *Longdon, &c., Drainage Board*, 41 J. P. 25.

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less rate to be levied thereon, as the circumstances of the case may require; and any such board may refrain, where any entire parish ought in their judgment to be so exempt, from issuing an order for levying any money thereon, notwithstanding they may issue an order or orders for levying sums upon any other parish or parishes in their district.

Provisions for cases where a part of a parish is placed under the management of the vestry or board of adjoining parish or district.

160. Where part of any parish is placed for all or any of the purposes of this Act under the management of the vestry or district board of an adjoining parish or district (*c*), the sums which such vestry or board may require for defraying the expenses of executing this Act by such vestry or board in the part so placed under their management shall be from time to time paid, upon their orders, by the vestry of the parish whereof such part is so placed under the management of such other vestry or board, or if such parish is comprised in a district formed by this Act then by the district board of such district; and such sums shall be raised by the vestry or board upon whom such orders are made in like manner as if the expenses in respect whereof the same are required had been incurred by them in executing this Act.

Overseers to collect the rate in the same manner as the poor rate.

161. The overseers of the poor of every parish to whom any such order as aforesaid is issued, shall levy the amount mentioned therein according to the exigency thereof, and shall for that purpose make separate equal pound rates (*d*) upon their parish, or the part thereof upon which any sum specified in such order is required to be levied, in respect of each sum thereby ordered to be levied; that is to say, a separate rate in respect of each sum ordered to be levied for defraying expenses connected with sewerage, to be called a sewers rate (*e*);

(*c*) That is under the provision contained in section 140. If the vestry on which an order is made under this section make an order for contribution on another vestry, and the order is good on the face of it, the court will not enter into the propriety of the assessment, but will order a peremptory *mandamus*; *R.* v. *Strand District Board*, 4 B. & S. 526; and it is no answer to the *mandamus* that the order of the vestry was for payment of expenses incurred before the date of the order of the metropolitan board, or that it was for more than was due, and the only mode of contesting the assessment is said to be before the auditor under section 195 of this Act and the 38th section of the Metropolis Management Amendment Act, 1862.

(*d*) Under this Act no rate except the lighting and sewers rate need be kept distinct from the general rate, and all property must be rated to the general rate on the same scale as the poor rate in the parish, without any reference to differential scales of rating prescribed by a local Act; *R. v. The Great Western Railway Company*, 28 L. J. M. C. 59.

(*e*) In *Christie* v. *The Guardians of the Poor of St. Luke, Chelsea*, 27 L. J. M. C. 153, it was held that a rate made by the guardians of the poor pursuant to the order of the vestry, to whom a precept had been issued by the Metropolitan Board of Works, requiring them to pay to the treasurer of the board a sum for defraying the expenses of the board was good, though it did not set out the precept or the order of the vestry. There is a right of appeal against such a rate; *Empson* v. *Metropolitan Board of Works*, 25 J. P. 677.

The sewers rate ordered to be raised by this section is to be levied on the persons, and in respect of the property by law rateable to the relief of the poor in the respective parishes; and it is to be assessed upon the net annual value of such property, ascertained by the rate for the time being for the relief of the poor; subject, however, to the partial exemption

Section 161. a separate rate in respect of each sum ordered to be levied for defraying expenses of lighting (where a separate sum is ordered to be levied for defraying such expenses), to be called a lighting rate; and a separate rate in respect of each sum ordered to be levied for defraying other expenses of executing this Act, to be called a general rate; and shall make such respective rates of such amount in the pound on the annual value of the property rateable as will in their judgment,

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created by the 163rd section, providing that particular descriptions of land should be rated only in the proportion of one-fourth, and to the exemptions, reductions, or allowances pointed out by the 164th section. It is likewise subject to the exemptions from the poor rate applicable to property of certain descriptions, or occupied in a particular manner created by express statutes, such as property occupied by scientific or literary societies, 6 & 7 Vict. c. 36, 3 & 4 Will. 4, c. 30, as to churches and chapels, 32 & 33 Vict. c. 40, as to Ragged and Sunday Schools and others. See *Lumley's Commentary on the Parochial Assessment Act*, 4th edition. And further, it is governed by the peculiar provisions which may exist in particular parishes under local Acts in relation to poor rates.

The 32 & 33 Vict. c. 67, Valuation (Metropolis) Act, 1869, which extends only to unions and parishes not in union which are for the time being either wholly or for the greater part in value thereof respectively situate within the jurisdiction of the Metropolitan Board of Works, by section 77, schedule 5, repeals various sections of the Union Assessment Committee Act, 1862, and makes the valuation list for the time being conclusive evidence of the gross value, and of the rateable value of the several hereditaments included therein, and of the fact that all the hereditaments required to be inserted therein have been so included for the purpose of any of the following rates which are made during the year that the list is in force; namely, the county rate, the metropolitan police rate, the church rate, the highway rate, the poor rate, the police, sewers, consolidated, and other rates in the city of London, the sewers, lighting, general, and other rates levied by order of district boards or vestries, the main drainage improvement and other rates, and sums assessed on any part of the metropolis by the Metropolitan Board of Works, assessments for contributions under the Metropolitan Poor Act, 1867, and every other rate, assessment, and contribution levied, made, and required in the metropolis on the basis of value. As to church rates see Act for "Abolition of Compulsory Church Rates" in note to section 1 of 19 & 20 Vict. c. 112, *post*.

The rule laid down in the text books and established by a long current of authorities has been that all persons whose property derives benefit from the sewers of the commissioners, or other body, are liable to be assessed to the sewers rate in respect of that property. See *Anselm* v. *Barnard*, 2 Keb. 675; *R.* v. *Wright*, 2 Keb. 42; *Masters* v. *Scroggs*, 3 M. & S. 447; *Stafford* v. *Hamston*, 2 B. & B. 691; *R.* v. *Commissioners of Sewers for the Tower Hamlets*, 9 B. & C. 517; *St. Katharine Dock Company* v. *Higgs*, 14 L. J. Q. B. 348, affirmed in error, 16 L. J. Q. B. 377; *Soady* v. *Wilson*, 3 A. & E. 248. The last case is a leading authority on the subject, and see reference to that decision and observations in the judgment of the court upon the case of the *Metropolitan Board of Works* v. *The Vauxhall Bridge Company*, 26 L. J. Q. B. 253, in the note to section 164, *infra*. See also Serjt. Woolrych, Law of Sewers, p. 66, and *Dorling* v. *Epsom Local Board of Health*, 24 L. J. M. C. 152; 5 E. & B. 471.

All objections against a rate good on the face of it (except for such defects as make the rate a nullity, as where a person is rated in respect of land not in his occupation; *Milward* v. *Caffin*, 2 W. Bl. 1330; and see observations of *Crompton*, J., in *Luton Local Board of Health* v. *Davies*, 29 L. J. M. C. 173), must be taken by way of appeal; *Empson* v. *Metropolitan Board of Works*, 25 J. P. 677; *Churchwardens of Birmingham* v. *Shaw*, 10 Q. B. 868; 18 L. J. M. C. 89; *Luton Local*

having regard to all circumstances, be sufficient to raise the sums specified in such order; and such rates shall be levied on the persons and in respect of the property by law rateable to the relief of the poor in the respective parishes (*a*), and shall be assessed upon the net annual value of such property ascertained by the rate for the time

Section 161.

Board of Health v. *Davies, supra,* even where the rate was made, not by the overseers but by individuals appointed by the metropolitan board, under section 68, on the default of a district board; *Empson* v. *Metropolitan Board of Works, supra.* Therefore an objection that the property derives no benefit; *R.* v. *Newman,* 29 L. J. M. C. 117, or that the rate was made for an illegal purpose under Public Health Act, 11 & 12 Vict. c. 63; *Luton Local Board of Health* v. *Davis, supra,* or that it was assessed upon an erroneous principle; *Metropolitan Board of Works* v. *Vauxhall Bridge Company,* 26 L. J. Q. B. 253, can only be taken on appeal; and if a party wishes to object that he was neither owner nor occupier of the premises rated he must appear and object to the issuing of a distress warrant; *R.* v. *Tompkins,* 31 J. P. 470. A tenement in the King's dockyard, which derived benefit from the sewers, occupied by a government officer who paid no rent, was held liable to be rated; *Netherton* v. *Ward,* 3 B. & Al. 21; but not property in the personal occupation of the sovereign, as Kensington Palace; *Attorney-General* v. *Donaldson,* 10 M. & W. 117. Arrears of poor rates may be levied by others than the immediate successors of those who made the rate; *Overseers of East Dean* v. *Everett,* 25 J. P. 565. A magistrate has no jurisdiction on the hearing of a complaint for non-payment of a sewer rate, to state a case under 20 & 21 Vict. c. 43; *Reg.* v. *Newman, supra,* and in *R.* v. *Justices of Gloucestershire,* 2 E. & E. 420, the justices were held justified in refusing to state a case on the hearing of a summons for non-payment of a sewers rate made under a local Act incorporating the Public Health Act, 1848. The limitation of six months provided by Jervis' Act, 11 & 12 Vict. c. 43, s. 11, does not apply to a proceeding for enforcing a rate under a local Act by the mere issuing of a distress warrant; *Sweetman* v. *Guest,* L. R. 3 Q. B. 262. *Quære* whether the proceeding constituted "an exercise of summary jurisdiction" so as to enable the justices to state a case under 20 & 21 Vict. c. 43, *Ibid.* By the Public Health Act, 1875, s. 256, in proceedings for recovery of rates under that Act, the magistrate is *to make an order* for payment, and in default of compliance to issue a warrant.

(*a*) This directs the vestry to guide itself by the rate for the relief of the poor in each parish, without reference to any distinction in a local Act, and no property should be separately assessed or exempt unless it be so within, the poor rate for the parish; *R.* v. *Great Western Railway Company,* 28 L. J. M. C. 59; *Howell* v. *London Dock Company,* 27 L. J. M. C. 177, *contra,* was objected to as an authority by *Erle,* J., in *R.* v. *Great Western Railway Company, supra.* By 32 & 33 Vict. c. 41, s. 20, the words "poor rate" are defined to extend in the metropolis to every rate made by the overseers (*i.e.,* every authority that makes an assessment for the poor rate), and chargeable upon the same property as the poor rate. The metropolitan board are not rateable to the poor or general rate in respect of land occupied by their sewers, but they are so in respect of land and buildings occupied in connection with their sewers and which have an occupation value; *R.* v. *Metropolitan Board of Works,* 38 L. J. M. C. 24; and see *Metropolitan Board of Works* v. *West Ham,* L. R. 6 Q. B. 193, where it was decided that the sewers within an embankment were not rateable to the poor rate as not the subject of beneficial occupation, but that the rest of their property, *i.e.,* pumping station, &c., was rateable, and it made no difference that the embankment was above ground.

A tramway company under the Tramways Act, 1870 (33 & 34 Vict. c. 78) were held liable to the poor rate in respect of their occupation of the road by their tramway; *Pimlico, &c., Tramway Company* v. *Greenwich Union,* L. R. 9 Q. B. 9. See as to non-liability to poor rates of the Commissioners

Section 161. being for the relief of the poor (*a*); and the said overseers shall, for the purpose of levying such rates, proceed in the same manner, and have the same powers, remedies, and privileges, as for levying money for the relief of the poor; and all such rates shall be allowed in the same manner, and be subject to all the same provisions in relation to appeal and to excusing persons from payment on account of poverty and otherwise, as the rate for the relief of the poor in the same parish; and such overseers shall pay (*b*) to the treasurer of the vestry or board, or otherwise as in such order directed, the amount mentioned in the order, within the time or respective times specified for that purpose, and the excess, if any, which may have been levied beyond such amount, which excess shall be placed to the credit of the parish or part in which the same has been levied; and the said overseers shall at the time of making any such payment deliver with the money a note in writing signed by them, specifying the amount so paid, which note shall be kept as a voucher for the receipt of that particular amount; and the receipt of the treasurer of the vestry or board, or of any proper officer or person of or belonging to any bank into which such money is so paid, specifying the amount paid to him by the overseers, shall be a sufficient discharge to the overseers for such amount.

Public buildings and void spaces now rateable (except churches and burial grounds) to continue rateable.

162. Provided always, that all such hospitals, public schools, and other public buildings, dead walls, and void spaces of ground as are now by law rateable to any rate for the costs and charges of paving or repairing the pavements within any parochial or other district, either separately or jointly with any other object or objects, (except only places of religious worship, and burial grounds, or places which have been used for burial grounds, and are not used for any other purpose,) shall be rateable under this Act to the like extent and for the like objects or purposes as they may now be rated, and the rates to be made in respect of such objects or purposes shall be payable by the persons now liable to pay the same, and be recoverable in like manner, as any rate to which such buildings and spaces of ground are now rateable as aforesaid in respect of the like objects or purposes.

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of Woods and Forests in respect of part of a bridge and approaches situate in a parish, their only occupation being as servants of the Queen acting for and on behalf of the Queen; *R.* v. *M'Cann*, 37 L. J. M. C. 25, Ex. Ch. 123.

In *Stratton* v. *Metropolitan Board of Works*, L. R. 10 C. P. 76; 44 L. J. M. C. 53, the vestry of Lambeth were held entitled to recover in a lump sum the aggregate amount owing for several years in respect of the deficiency in poor rates, which the board were required to make good under the Thames Embankment Acts and Lands Clauses Consolidation Act. In *Wheeler* v. *Metropolitan Board of Works*, L. R. 4 Ex. 303, the metropolitan board were decided to be promoters within section 133 of Lands, Clauses Consolidation Act, 1845, and liable in an action in respect of a deficiency in the poor rates during the construction of their works. See also *East London Railway Company* v. *Whitechurch*, L. R. 7 Ex. 248, Ex. Ch. 424; 7 H. L. 81, overruling *R.* v. *Metropolitan District Railway Company* L. R. 6 Q. B. 698.

(*a*) Of which the valuation list for the time being is made conclusive evidence. See reference to the Valuation (Metropolis) Act, 1869, in note to section 161, *ante*.

(*b*) See section 14 of 25 & 26 Vict. c. 102, *post*, enforcing payment and accounting by overseers, annexing penalties in case of default, and as to appointment of paid collectors.

Section 163.

Land to be rated to the sewers rate at one fourth part of its annual value (*c*).

Existing exemptions in respect of sewers rate to be allowed (*d*).

163. Provided also, that any sewers rate raised under this Act shall, as regards all land used as arable, meadow, or pasture ground only, or as woodland, orchard, market garden, hop, herb, flower, fruit, or nursery ground, be assessed and levied in the proportion of one fourth part only of the net annual value of such land.

164. Provided also, that where any property was at the time of the issuing of the first commission under the said Act of the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve, entitled to exemption (*e*) from or to any reduction or allowance in

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(*c*) This proviso is taken from the 15 & 16 Vict. c. 64, s. 1, "An Act to continue and amend the Metropolitan Sewers Act, 1848," and was not contained in the original Metropolitan Sewers Act, 11 & 12 Vic. c. 112. The provision was based on the 88th section of 11 & 12 Vic. c. 63. (Public Health Act, 1848.)

(*d*) See note to previous section.

(*e*) In considering the application of this provision it is necessary to refer to the proviso to the 76th section of the 11 & 12 Vic. c. 112, the Metropolitan Sewers Act, 1848, to the effect that where any property was by law, or by the practice of the existing commission or commissioners of sewers, entitled to exemption, wholly or partially, from or to any reduction or allowance in respect of the sewers rate, the commissioners should in making the district sewers rate observe and allow such exemption, reduction, or allowance. The title to exemption, wholly or partially, was *by law* or by the *practice* of the existing commissioners. The exemptions from sewers rates existing by the general law are stated by Callis, pp. 222, 223, and see Serjeant Woolrych Law of Sewers, p. 85, 3rd edition. The records of the former commissions present a few examples of property, which by reason of the obligation of the owners to do works of repair, cleansing, &c., were exempted from the ordinary levies. In March, 1850, a rate of the metropolitan commissioners of sewers was successfully appealed against by an inhabitant of High-street, Poplar, on the ground that he, in common with the other owners and occupiers of messuages and lands in that locality, had by reason of their tenure been bound to cleanse and scour the Poplar ditch, and by the court minutes of the Poplar commission it appears that in the case of *Horne* v. *Farmer*, tried before Lord *Tenterden* in the year 1826, the jury found that such an exemption existed. Exemptions on similar and other grounds appear to have prevailed under the Greenwich and other commissions. The practice with regard to rating tithe and tithe rent-charge varied under the former sewers commissions, it being wholly exempted in some cases and assessed at a lower rate in others. The case of *R.* v. *Goodchild and Lamb*, 27 L. J. M. C. 238, 251, is an authority to show that tithe commutation rent-charge was not rateable in the parish of Hackney, it being within the exception in this section because it had been the practice of the commission within the limits of which this parish was situate, to exempt tithes from sewers rate. The same case would seem to be an authority that tithe rent-charge generally was not liable by law to contribute to sewers rate. But that doctrine has not been universally acted on, for tithe rent-charge is certainly assessed to those rates in some parts of the metropolis, though undoubtedly there is a great diversity in this respect in the various metropolitan districts. It may be that so far as concerns parishes and districts which are situate within the limits of the former sewers commissions the diversity may be dependent upon the particular practice of those commissions. But this rule cannot apply generally, as there are localities comprised within the limits of the metropolis as defined by this act which were not included in the area of any of those commissions.

In *Luscomb* v. *Local Board of Health for Plymouth*, 27 L. J. M. C.

Section 164. respect of the sewers rate, such exemption, reduction, or allowance

299, it was held that under section 88, of the Public Health Act, 1848, 11 & 12 Vict. c. 63, property was entitled to exemption only in respect of its *kind* and not in respect of its *locality*. The words of the Public Health Act, 1875, s. 211, are "the same kind of property." The cases on this enactment show that they applied not to locality but to the nature of the property; see *Taite* v. *Carlisle Local Board of Health*, 2 E. & B. 492; *Chelmsford Union* v. *Chelmsford Local Board of Health, ibid* p. 500; *Luscomb* v. *Local Board of Health for Plymouth*, 27 L. J. M. C. 299. But it must be borne in mind that the words in the section of the Public Health Act referred to are "any *kind* of property," whereas the present section uses the expression "any property" only. The construction of this section and the effect of the provision as to exemptions, &c., came under the consideration of the Court of Queen's Bench in *Imperial Gas Light Company* v. *Head and Metropolitan Board of Works*, 32 L. J. M. C. 115, which decided that the old law of sewers must in general prevail, that if property be situate within the area occupied by the sewers it must contribute without any reference to the amount of the benefit derived, and if the property does not fall within the classes mentioned in section 163, nor within any exemption or reduction mentioned in this (the 164th) section, it must be assessed at its full value as ascertained by the poor rate for the time being. The question was again considered in the *Hammersmith Bridge Company* v. *Overseers of Hammersmith*, 48 L. J. M. C. 79; L. R. 6 Q. B. 230, where it was held by the majority of the Court that under this section, which preserves the former exemptions from sewers rate, the bridge was not property which according to the old law of sewers was entitled to exemption; for although the bridge derived no direct or immediate benefit from the sewers, yet it derived "the general benefit and advantage of being accessible, and of its approaches and neighbouring public ways being properly drained and cleansed," according to the rule laid down in *Soady* v. *Wilson*, 3 Ad. & Ell, 248, and was therefore now rateable; and Mr. Justice *Blackburn*, in delivering the judgment of the majority of the court, says: "There are expressions in the opinion given by Lord *Campbell* in *Metropolitan Board of Works* v. *Vauxhall Bridge Company*, 26 L. J. Q. B. 253, that seem to favour an idea that the amount of the assessment was to be proportionate to the amount of the benefit derived by the particular property, but in the *Fulham Gas Company* v. *Metropolitan Board of Works*, 32 L. J. M. C. 120, *Crompton*, J., who was a party to the Vauxhall Bridge case, explains that it was merely intended to express that if there was no benefit (by which we understand no direct and immediate benefit) there was to be no rate; but if there was any benefit, the amount of the rate was to depend upon the poor law assessment. We are not to be understood as affirming the principle laid down in the Vauxhall Bridge case even thus qualified, or as determining that the principle of *Dorling* v. *The Epsom Local Board*, 24 L. J. M. C. 152, is not applicable to a district within the Metropolis, but we do not think it necessary in this case to decide the general question." In the case of *Pew* v. *Metropolitan Board of Works*, 6 B. & S. 235, Mr. Justice *Blackburn* adopts the argument that the opinion in the Vauxhall Bridge case had been given without sufficiently considering that it throws on those imposing the rate the task of ascertaining what was the separate benefit derived by every property within the district from the works, a task which it would be quite impracticable for them to perform. The case of *Dorling* v. *Epsom Local Board*, referred to above, decided that under the Public Health Act, 1848, the occupier of premises within a district under a local board may be assessed to a special district rate where the premises derive no direct and immediate benefit from the works.

The Metropolis Management Acts Amendment Act, 1875, after reciting this and the 163rd section, provides that from and after the 6th April, 1876, the metropolitan board, in every assessment made by them upon such parts of the metropolis as contain property wholly or partially exempt from sewers

shall be observed and allowed in levying any sewers rates under this Act. Section 164.

Existing exemptions of land from lighting rates to be allowed (*a*).

165. Provided also, that in every parish or part of a parish in which at the time of the passing of this Act the Act of the session holden in the third and fourth years of King William the Fourth, chapter ninety, is in force, the owners and occupiers of houses, buildings, and property other than land shall be rated to every lighting rate made under this Act at a rate in the pound three times greater than that at which the owners and occupiers of land shall be rated in such lighting rate ; and in every parish or part of a parish in which under any other Act land is now rated in respect of expenses of lighting at a less amount in proportion to the annual value thereof than houses, or is now wholly exempted from

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rate, and in the precepts issued for payment of the sums so assessed, shall make an allowance or abatement equal to the exemptions which under this and the previous section, are entitled to be made in any rate for the purpose. By the 2nd section the overseers and assessment committees, under the Valuation (Metropolis) Act, 1869, shall cause the totals of the gross and rateable value of the property so wholly or partially exempt from sewers rate, and the extent of such exemptions, to be ascertained and inserted in the valuation lists which will come into force on the 6th April, 1876, and in every valuation list which will come into force on the 6th April, 1876, and in every valuation list which shall thereafter be made by them. See Act *post* Appendix.

(*a*) In *Reg.* v. *Vauxhall Waterworks Company*, 6 E. & B. 1108, 3 Jur. (N. S.) 411, the company were held to be rateable for their mains and pipes under this section on the lower scale. In *Peto and others* v. *the parish of West Ham*, 28 L. J. M. C. 240, it was held (*dissentiente, Erle*, J.) that a wet dock or basin of ninety-five acres was properly *ejusdem generis* with the houses and buildings mentioned in the Act, and that the occupiers were rateable at the higher amount. This case was the subject of discussion in *R.* v. *Overseers of Neath*, L. R. 6 Q. B. 707, where it was decided that where the appellants had been assessed to the poor rate under the 33 section of 3 & 4 Will. 4, c. 90, in respect of a canal, towing path, &c., the word "property" in the Act did not include a canal and towing path, that the bridges and dry dock were accessories to the canal, and that the whole ought to be rated as land. And a line of railway was held to be land within the same enactment and rateable on the lower scale ; *R.* v. *Midland Railway Company*, L. R. 10 Q. B. 389 ; *Newport Dock Company* v. *Newport Dock Local Board*, 2 B. & S. 708.

See *East London Waterworks Company* v. *Leyton Sewer Authorities*, 40 L. J. M. C. 190.

See case stated on Valuation (Metropolis) Act, 1869, as to the rateability of land under Regent's Canal Act ; *R.* v. *St. Pancras Assessment Committee*, 42 J. P. 500.

Where an invalid lighting rate had been made under 3 & 4 Will. 4, c. 90, a fresh rate was held good though the first had not been quashed ; 3 Cox Mag. Ca. 536.

Before the passing of the Metropolis Local Management Act, the East London Waterworks Company had been assessed to a lighting rate under a local Act regulating the lighting of the hamlet of Mile End Old Town, but on appeal, had been held by the court not to be rateable to such rate, and the court of Queen's Bench decided that by the terms of this section they were exempt from liability to be rated under its provisions ; *East London Waterworks Company* v. *The Overseers of the Poor of the Hamlet of Mile End Old Town*, 29 L. J. M. C. 66. Where part only of a parish was before this Act exempted, under the 3 & 4 Will. 4, c. 90, the other part is not entitled to this exemption, but must be assessed at the higher rate ; *R.* v. *Fitch*, 1 L. T. (N. S.) 327.

Section 165. being rated in respect of such expenses, such land shall continue to be rated to every lighting rate made under this Act at such less amount, or, where such land is now wholly exempted as aforesaid, shall be wholly exempted from such rate.

Overseers on non-payment of the rate shall be distrained upon; and in default of sufficient distress the arrears may be levied on the parish.

166. In case the amount ordered by any such order as aforesaid to be paid by the overseers of any parish be not paid in manner directed by such order and within the time therein specified for that purpose, it shall be lawful for any justice of the peace, upon the complaint by the vestry or board, or by any person authorized by them for this purpose, to issue his warrant for levying the amount, or so much thereof as may be in arrear, by distress and sale of the goods of all or any of the said overseers; and in case the goods of all the overseers be not sufficient to pay the same, the arrears thereof shall be added to the amount of the next levy which shall be directed to be made in such parish for the purposes of this Act, and shall be collected by the like methods.

Provision for cases where the vestry of any parish in schedule (A.) make the poor rate.

167. Where the vestry of any parish mentioned in schedule (A.) to this Act make the rate for the relief of the poor in such parish, such vestry shall from time to time raise and levy the sums required for defraying their expenses of executing this Act in like manner as overseers are required to do with respect to the sums for which orders are made upon them by any vestry under this Act, and shall, in raising such sums, act upon the like principles and have the like discretion as any vestry making orders upon overseers under this Act; and where any parishes maintain their poor in common by a common rate, the orders for levying any money by this Act directed to be made on the overseers of such parishes shall be made on the overseers by law authorized to levy such rate thereon, and such sums shall be levied by such overseers, in manner provided by this Act, as if such parishes were one parish.

Special persons may be appointed to levy rates in certain cases (*a*).

168. Any vestry or district board may, in case of any default or neglect of any overseers to pay the amount required by any such order as aforesaid within the time and in the manner directed by such order, and the said metropolitan board may, in case of any default or neglect of any vestry or district board to pay the amount required by any precept of the said metropolitan board within such time and in such manner as may be therein mentioned, appoint persons to levy any money required by such vestry or board for the purposes of this Act in any parish or district, and such persons shall proceed in the same manner, and have the same powers, remedies, and privileges, and be subject to the same regulations and penalties, with reference to the levying of such money, as any overseers would have had or been subject to with reference to levying any such money in pursuance of an order of the vestry or district board, or, where the

(*a*) The power to levy includes the power of making a rate, and where a rate made by assessors appointed by the metropolitan board under this provision is good on the face of it, the ratepayer cannot, on the summons for non-payment, insist that the board had no power to issue their precept, and that the appointment of the assessors was invalid, as this is matter of appeal only. The rate made by such assessors may be appealed against in the same manner as a rate made by overseers under section 161. The question of whether the rate has been duly published is one of fact, and if there be any evidence to support the decision of the magistrate, the court will not interfere; *Empson* v. *Metropolitan Board of Works*; 25 J. P. 677; 3 L. T. (N. S.) 624.

same might be levied by the vestry under this Act, as such vestry would have had or been subject to with reference to levying the same (*b*). Section 168.

Provision for deduction by tenant of sewers rate(*c*).

169. As between landlord and tenant, every tenant, whether his tenancy have commenced before or after the passing of this Act, and who if this Act had not been passed would have been entitled to deduct against or to be repaid by his landlord any sum paid by such tenant on account of the sewers rate, shall in like manner be entitled to deduct against or to be repaid by his landlord any sewers rate levied on him under this Act.

Provisions for defraying Expenses of Metropolitan Board.

Sums to be assessed upon the city and other parts of the metropolis by metropolitan board for defraying expenses.

170 (*d*). The metropolitan board of works shall from time to time ascertain and assess upon the city of London and the other parts of the metropolis the sums which in their judgment ought to be charged upon the said city and such other parts respectively for defraying the expenses of the said board in the execution of this Act (*e*), having regard to the annual value of the property in the several parts of the metropolis, and having regard, in the case of expenditure on works of drainage, to the benefit (*f*) derived from such expendi-

(*b*) See the provisions in 21 & 22 Vict. c. 104, s. 15, *post*, as to the making of rates by metropolitan board on default of vestries, &c., in payment of sums assessed for metropolis main drainage rate, and the 24th section of the Metropolitan Board of Works (Loans) Act, 1869, as to collection of rates.

(*c*) The sewers rate is a landlord's tax, and in the absence of any agreement binding the tenant to pay such rate, it may be deducted from the rent. A covenant to pay all rates includes sewers rates. See *Waller* v. *Andrews*, 3 M. & W. 312; *Bennett* v. *Womack*, 7 B. & C. 627.

By the Metropolitan Board of Works (Loans) Act, 1869, s. 23, where any portion of the consolidated rate under this Act represents any rate which for the purpose of any contract or otherwise is deemed to be a landlord's or tenant's, such portion shall for those purposes be deemed to be such landlord's or tenant's rate, as the case may be, and all rights as between landlord and tenant in relation to the sums or rates assessed by the metropolitan board are to be saved; see Act, *post*, Appendix.

(*d*) This section was repealed by the 5th section of 25 & 26 Vict. c. 102, *post*, which contained new provisions with respect to assessments by the metropolitan board. The 21 & 22 Vict. c. 104, s. 10, *et seq.*, provided for assessments for the metropolis main drainage rate. See now the Metropolitan Board of Works (Loans) Act, 1869, section 22, *post*, Appendix, whereby the metropolitan board are required for the purposes mentioned, in lieu of all rates or assessments authorized at the passing of the Act to be assessed by them generally over the metropolis, to assess and raise a rate to be called the metropolitan consolidated rate. See also note to 5th section of Amendment Act, 1862, *post*, and the Act itself, *post*, Appendix.

(*e*) By the Thames Embankment Act, 1862, the expenses of repairing the Thames embankment are to be paid out of moneys raised for defraying the ordinary expenses of the board; see section 22; and various other expenses are by subsequent Acts directed to be defrayed in a similar manner. The Metropolitan Gas Act, 1860, 23 & 24 Vict. c. 125, s. 6, directed that the costs, &c., of, and incident to its passing, and preliminary thereto, should be paid by the metropolitan board out of moneys to be levied by them from the several vestries, &c. See *Wyatt* v. *The Metropolitan Board of Works*, 31 L. J. Q. B. 317.

(*f*) The Court of Queen's Bench refused to issue a *certiorari* to bring up an order of assessment made under this section and the precept issued pursuant thereto, the ground of the application being that the parish on which

Section 170. ture by the several parts of the metropolis affected thereby ; and any such sum may be so assessed wholly or in part in respect of expenses already incurred or of expenses to be thereafter incurred ; and for the purposes of such assessment the annual value of the property in such several parts shall be estimated according to the estimate or basis on which the county rate is assessed, or, where there is no such county rate, according to a like estimate (*a*).

Power to metropolitan board or any one authorized by them, to inspect rates made for county or part of county within the metropolis (*b*).

171. The clerk of the said metropolitan board, or any person authorized by the said board in this behalf, may from time to time inspect any rate made or to be made for any county any part of which is within the metropolis ; and any basis or standard for the county rate of any such county, and any returns concerning all or any of the parishes or places, whether parochial or extra-parochial, in the metropolis, delivered or to be delivered in pursuance of any Act relating to county rates, and any rate made by the commissioners of sewers of the city of London, and any valuation on which the same is made, and may take copies or extracts from any such rates, basis or standard, returns or valuation, without payment of any fee or reward ; and if any person having the custody of any such rate, basis or standard, return or valuation, wilfully neglect or refuse to permit any such clerk or person authorized as aforesaid to inspect the same, or to take copies or extracts of or from the same, at all reasonable times, he shall forfeit for every such offence any sum not exceeding £10.

Payment to be obtained from the city and from parishes by precepts to the chamberlain of the city and to vestries and district boards (*c*).

172. For obtaining payment of the sums so assessed upon the city of London and the parishes mentioned in schedules (A.) and (B.) to this Act, the said board shall issue precepts under their seal, requiring payment therof to their treasurer, or into any bank therein mentioned, within such time as may be therein limited, and every such precept for any sum assessed upon the city of London shall be directed to the chamberlain of the said city ; and every such precept for any sum assessed upon any parish mentioned in schedule (A.) to this Act shall be directed to the vestry thereof ; and every such precept for any sum assessed upon any district mentioned in schedule (B.) to this Act, or any parish comprised therein, shall be directed to the board of works for such district ; and where any such sum is assessed upon any part of any parish or district, the said metropolitan board shall specify in their precept the part of such parish or district upon which such sum is assessed.

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the assessment was made derived no benefit from a part of the expenditure included in it ; *Ex parte Vestry of St. Marylebone*, 22 J. P. 799.

(*a*) By the Valuation (Metropolis) Act, 1869, the valuation list for the time being is made conclusive evidence of the gross value and rateable value for the purposes, amongst others, of the main drainage improvement and other rates, or sums assessed in any part of the metropolis by the metropolitan board. See reference to the Act in note to section 161, *ante*.

(*b*) By section 17 of 21 & 22 Vict. c. 104, *post*, the metropolitan board might require to be furnished with copies of accounts, and the power to demand copies of poor and other rates, &c., is given to the board as well as to vestries and district boards by section 15 of 25 & 26 Vict. c. 102, *post*.

(*c*) By 25 & 26 Vict. c. 102, s. 13, *post*, assessments and precepts may be amended. The Metropolitan Board of Works (Loans) Act, 1869, section 22, contains special provisions with respect to the precepts of the board for the purposes of the consolidated rate ; and as to computations for estimates and other matters, refer to the Act, *post*, Appendix. See as to form of precepts now issued by the board, note to section 22 of Metropolitan Board

Section 173.

Payment of sums assessed upon the city.

173. The chamberlain of the city of London shall, out of any moneys in the chamber of the said city, pay to the treasurer of the metropolitan board of works, or otherwise as they may direct, the sums required by their precepts, within such time as may be therein mentioned; and all payments so made by the said chamberlain shall be charged by him against and reimbursed to him out of any rates which the commissioners of sewers of the city of London are authorized to direct to be made under any Act (*d*) relating to the sewerage of the said city; and such commissioners shall have full power to raise every such sum by any such rate which they may be authorized to direct to be made as aforesaid, or by any addition thereto.

Payment by vestries and district boards of sums assessed by metropolitan board.

174. All sums which any vestry or district board may be required to pay by such precepts as aforesaid shall be paid by such vestry and board respectively within such time as may be therein mentioned, and shall be raised (*e*) in like manner as if the same were required by the said vestry or board for defraying the expenses of such vestry or board in the execution of their powers and duties under this Act in relation to the sewerage of their parish or district.

Provision for assessing and levying rates in places where there is no poor rate (*f*).

175. The sums which may be assessed from time to time upon any place mentioned in schedule (C.) to this Act, or such part thereof as may not be comprised within any parish, or the city of London, shall be raised by means of a rate to be made and levied as herein provided; that is to say, the said metropolitan board shall from time to time, by warrant under their seal, appoint a proper person to be an assessor, for the purpose of assessing the full and fair annual value of all property in every such place, or such part thereof as aforesaid, which, if the same were not extra-parochial, would be liable to be rated to the relief of the poor, and rating the same to a rate to be levied under this Act; and such assessor shall, within forty days after the delivery to him of the warrant of his appointment, make, sign,

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of Works (Loans) Act, 1869. See reference to the Metropolis Management Amendment Act, 1875, 38 & 39 Vict, c. 33, with respect to exemptions referred to in note to section 142, *ante*; and refer to the Act, *post*, Appendix.

(*d*) The rates made by the commissioners of sewers of the city of London are made under 11 & 12 Vict. c. 163 (continued by 14 & 15 Vict. c. 91), s. 168, *et. seq.* They are applicable to the purposes of constructing, altering, repairing and cleansing the sewers of the city. These must now mean sewers other than those enumerated in schedule (D.) to this Act.

(*e*) See section 9 of 25 & 26 Vict. c. 102, *post*, authorizing vestries and district boards to pay precepts out of moneys in their possession, and section 10 making it lawful for vestries to include in sewers rates sums they may consider necessary to meet precepts received or to be received, and to make separate rates for metropolis main drainage to meet precepts received or to be received. See reference in note to section 158, *ante*, to Metropolitan Board of Works (Loans) Act, 1869, section 24, directing vestries and district boards, in their orders to overseers to pay over moneys to satisfy, &c., the precepts of the metropolitan board for the purpose of the consolidated rate, to distinguish such sums and those (if any) required for other purposes.

(*f*) This and the following sections, down to section 179 inclusive, are virtually repealed by the 12th section of 25 & 26 Vict. c. 102, providing for the assessments on these places, and the issuing of precepts to the bodies having control or authority in them. See 20 Vict. c. 19, declaring that extra-parochial places shall be deemed parishes for the purposes of the poor and other rates.

Section 175.

and return to the said board an assessment for the place named in such warrant; and the assessment shall be fairly written in a book, and shall specify, in different columns, the names of the respective inhabitants or occupiers of all messuages, lands, tenements, and hereditaments, the full and fair annual value of the same, and the amount of rate charged on the inhabitants or occupiers thereof, and when the premises are unoccupied, the full and fair annual value thereof to let; and every such assessor shall be allowed for his trouble and expenses such remuneration as the said board may think fit; and the same shall be paid out of the amount of the rate which shall be collected after such assessment; and the said rate to be levied as aforesaid shall, for the purposes of the provisions of this Act relating to exemption from and reduction or allowance in respect of sewers rate, and relating to deduction and repayment of sums paid on account of sewers rate, be deemed a sewers rate.

Allowance to assessors.

Places in schedule (C.) not now under rating for sewers not to be rated except for intercepting sewers (*a*).

176. Provided always, that the places mentioned in schedule (C.) to this Act which are not now under rating for sewers shall not be liable to be rated under this Act, except for the purpose of their contributing to the expense of carrying into effect any plan for preventing the sewage of the metropolis from flowing into the river Thames in or near the metropolis, so far as such places respectively shall be benefited.

When assessment is made, notice thereof to be given, and all persons included in the assessment to have liberty to inspect it, &c.

177. When such assessment has been allowed by the said board, public notice of such assessment, and of the place where the same may be inspected, shall be given by fixing such notice on the door of the church or chapel or some other conspicuous part of the place to which such assessment relates, upon the Sunday next or next but one after the same has been so allowed; and any person in whose custody such assessment may be shall permit every inhabitant or owner or occupier of property included in such assessment to inspect the same, and to make any extracts therefrom, without payment of any fee or reward; and if such person wilfully neglect or refuse to permit any such inhabitant, owner, or occupier to inspect such assessment or to make any extract therefrom, he shall, on conviction thereof before any two justices of the peace, forfeit for every such offence such sum, not exceeding £5, as the justices think meet.

Penalty for refusing inspection.

As to the collection of the rate charged in

178. The said board shall from time to time nominate one or more person or persons for levying the amount of rate charged in every such assessment, who shall proceed in the same manner, and shall have the same powers, remedies, and privileges, and be subject to the

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(*a*) By the Metropolitan Board of Works (Loans) Act, 1869, section 25, the places mentioned in schedule (C.) to this Act and every liberty, precinct, and place in the metropolis shall be liable to the metropolitan consolidated rate, except so far as they may be entitled under the General Improvement Acts, to any exemption from any rate or assessment, or part of a rate; and for this purpose they shall be deemed to be respectively benefited by all works executed (before or after the passing of the first-named Act) by the board under the Metropolis Main Drainage Acts, and those works shall be deemed works for carrying into effect a plan for preventing the sewage of the metropolis from flowing into the Thames in or near the metropolis. See Act, *post*, Appendix, and see Valuation (Metropolis) Act, 1869, referred to in note (*a*) to section 170, *supra*, making the valuation list for the time being in force, conclusive evidence of the gross and rateable value, for the purposes of the rates, assessments, &c., specified.

same regulations and penalties, with reference to the levying of such rate, as if he or they were an overseer or overseers of the poor in a place rated to the relief of the poor, and shall pay over the amount of such rate to the treasurer of the said board or otherwise as the said board may direct, or in default thereof shall be proceeded against in the same manner as overseers are by this Act to be proceeded against for non-payment.

Section 178.

such assessment

179. Provided always, that if any person who has paid the amount of rate charged upon him by the assessment made by an assessor appointed under this Act think himself aggrieved by such assessment, on the ground that such assessment includes property for which he is not rateable under this Act, or that it assesses his rateable property beyond its full and fair annual value, or that any person is omitted out of such assessment, or that the property of any person is assessed below its full and fair annual value, the person so aggrieved may appeal to the next court of general or quarter sessions for the county or franchise in which the cause of appeal arises, not less than twenty-one days after public notice of such assessment has been given as hereinbefore mentioned; provided that the person so intending to appeal shall give to the said board a notice in writing of such appeal, and of the cause and matter thereof, ten clear days at the least before such sessions, and shall also, within three days after his notice of appeal, enter into a recognizance before some justice of the peace of the county or franchise, with two sufficient sureties, conditioned to try such appeal at the said sessions, and to abide the order of the court thereupon, and to pay such costs as shall be by the court awarded; and in case such person appeal on the ground that any person is omitted out of the assessment, or that the property of any person is assessed below its full and fair annual value, the party so appealing shall not only give such notice of appeal to the said board, and enter into such recognizance as aforesaid, but shall also give a like notice of appeal to the person so interested in the event of such appeal as aforesaid; and the person so interested shall, if he desire it, be heard upon the appeal; and the justices of the peace at such sessions or some adjournment thereof, upon due proof of the notice having been given, and of the recognizance having been entered into as aforesaid, shall hear and determine the matter of the appeal in a summary manner, and shall make such order therein, with or without costs to either party, as the said justices think proper; and in case the said justices think the appellant entitled to relief, they shall order the assessment to be amended in such manner as may be necessary for giving him relief, and shall also order any money paid by him which he was not liable to pay to be returned to him; and in case he have appealed on the ground that any person is omitted out of the assessment, the said justices may order the name of such person to be inserted in the assessment, and to be therein rated at such amount as they deem just; and in case the appellant have appealed on the ground that the property of any person is assessed below its full and fair annual value, the said justices may order the amount at which such person is rated in the assessment to be altered in such manner as they deem just; and the proper officer of the court shall in each of the cases aforesaid forthwith amend the assessment accordingly, but the assessment shall not be quashed or altered with respect to any other person named therein; and the determination of the justices at any such sessions or adjournment shall be final and conclusive.

Appeal against assessment.

The assessment may be altered to relieve the appellant without altering any other part of it.

Section 180.

Provisions for discharging existing Liabilities of Boards or Bodies having Powers of paving, &c., and of the Metropolitan Commissioners of Sewers.

Provision for discharging existing liabilities under local Acts relating to paving &c. (*a*).

180. All debts and liabilities legally charged upon or payable out of any rates or assessments authorized to be levied or made under any Act relating to the paving, lighting, watering, cleansing, or improving of any parish in either of the schedules (A.) and (B.) to this Act, or any part of any such parish, shall be charged upon the rates (other than those to be raised for defraying expenses of sewerage, and (where separate rates are made under this Act for defraying expenses of lighting) expenses of lighting,) to be raised under this Act in such parish or part, and the several district boards and vestries shall cause the sums necessary for discharging such debts and liabilities to be raised in their respective districts and parishes accordingly; and such boards and vestries shall once in every year set aside, out of the rates charged under this Act with such debts and liabilities, such sum as they think proper, not being less than such per centage as hereinafter mentioned; that is to say, three pounds per centum where the amount of principle debt (exclusive of annuities) does not exceed one fourth of the rateable value of the property rateable for payment thereof, and in other cases two pounds per centum on the amount of the principal debt (exclusive of annuities), for the purpose of paying off such principal, except where the interest only of such debt is charged upon such rates or assessments as aforesaid, and except also where any such debt was contracted under the authority of a local Act, and the local Act did not require that the principal of such debt should be paid off within a limited time; and the sums so from time to time set aside, and all moneys applied in augmentation thereof, and the proceeds thereof respectively, shall be applied and dealt with, for the purpose of paying off such principal as aforesaid, in manner by this Act provided with respect to sums set aside for the purpose of providing a fund for paying off mortgages granted under this Act: Provided always, that where any debts or liabilities are charged on any rates or assessments not wholly levied or made in or upon any one parish mentioned in schedule (A.) to this Act, or any one district mentioned in schedule (B.) to this Act, the metropolitan board of works shall apportion such debts and liabilities between the respective parishes and districts in or upon which such rates or assessments are authorized to be levied or made, and shall certify to the district board and vestry respectively of every such district and parish the amount of the apportioned part of such debts and liabilities to be discharged by rates to be raised in such parish or district, or any part thereof,

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(*a*) See 25 & 26 Vict. c. 102, s. 79, *post*, authorizing, under special circumstances, sums advanced after the passing of the Act for paving part of the Bedford estate in St. Pancras to be added to debt. A debt incurred by the trustees of Grosvenor Square under a local Act was held to be transferred to the vestry under this enactment; *R.* v. *Vestry of St. George, Hanover Square*, 32 L. J. Q. B. 160; see also *R.* v. *Stretfield*, 32 L. J. M. C. 236. A vestry was decided to be liable for a proportionate part of rent secured to the owners of land used for making a road, a part of which within the parish was by the Metropolitan Roads Act, 1863, to be maintained by the parish; *Sansom* v. *Vestry of Shoreditch*, 38 L. J. C. P. 286.

under this Act, and such apportioned part shall be discharged accordingly (*b*): Provided also, that nothing in this enactment shall affect the right of any creditor to require payment of any such debt as aforesaid within any less time than is prescribed by this enactment for the payment thereof.

Provision for payment of liabilities of metropolitan commissioners of sewers.

181. Notwithstanding the determination or expiration of the said Act of the 11th and 12th years of her Majesty, chapter one hundred and twelve, all mortgages, annuities, securities, and other debts and liabilities which at or immediately before such determination or expiration may be a charge on or payable out of all or any of the rates authorized to be levied thereunder shall continue in full force, and be a charge on the districts or parts (*c*) in which such rates would have been authorized to be levied in case such Act had continued in force, and all persons who may be entitled to any such mortgages, annuities, or debts, shall have priority in respect of all moneys advanced before the passing of this Act over any moneys advanced to the metropolitan board of works under this Act, and shall have the like priority (*d*) among themselves as they are now entitled to under the said Act of the eleventh and twelfth years of her Majesty, chapter one hundred and twelve, or any Act continuing or amending the same; and the sums from time to time becoming payable under or required for payment of the said mortgages, annuities, securities, debts, and liabilities shall be raised by the metropolitan board of works in such districts or parts in like manner as the expenses of such board in the execution of this Act; and in case any such district or part be wholly or in part without the limits of the metropolis, as defined by this Act, the said metropolitan board shall from time to time issue precepts under their seal to the overseers (*e*) of the parish or parishes in

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(*b*) See note, page 63, *ante*, as to apportionments made by metropolitan board under this and the 93rd section.

(*c*) See the limits included within the metropolitan commission of sewers, note to section 145, *ante*. The 25 and 26 Vict. c. 102, s. 2, *post*, re-distributes the debt in respect of certain works of sewerage, and makes it payable out of moneys borrowed on the security of the main drainage rate; and see section 3 of the same Act, and schedule specifying the securities, &c., on which the debt on the loan from the Clergy Mutual Insurance Society shall stand charged, and note to that section. See also section 4, saving rights and remedies of persons holding securities. The provision in the 22nd section of the Metropolitan Board of Works (Loans) Act, 1862, relating to consolidated rate, is not to apply to sums levied under this enactment; see the Act, *post*, Appendix. Where the metropolitan board apportioned the quota to be paid by a metropolitan parish in respect of a debt incurred by the metropolitan commissioners of sewers according to the rateable value of the property in the entire district, and not on the amount expended in the parish, a rate assessed upon that principle was decided to be valid; *Pew* v. *Metropolitan Board of Works*, 34 L. J. M. C. 97. As to liability of Metropolitan Board of Works for damage from works of the metropolitan commissioners of sewers, refer to *Re Arbitration of Pettiward*, cited in note to section 148, *ante*.

(*d*) As to these priorities, see note to section 4 of 25 & 26 Vict. c. 102, *post*.

(*e*) See definition of word "overseer," section 250. Where the metropolitan board issued their precept to the overseers of a parish not within the metropolis as defined by this Act, but liable to a mortgage debt under the Metropolitan Sewers Act, 1848, requiring them to pay a sum "for defraying the expenses of the board" in the execution of this Act, it was

Section 181. which any part without such limits is comprised, requiring payment to the treasurer of the said board or into any bank in such precepts respectively mentioned, within such respective times as may be therein limited, of such sums as it may be necessary to raise in such part for the purposes aforesaid; and the provisions herein contained respecting the levying and payment of money by overseers in pursuance of any order of a vestry or district board shall be applicable, *mutatis mutandis*, to and for the levying and payment of money by overseers in pursuance of any such precept as aforesaid of the said metropolitan board (*a*); and the said board shall once in every year set aside such sum as they think proper, not being less than two pounds per centum on the amount of all principal moneys (exclusive of annuities) becoming payable by them under this enactment, for the purpose of paying off all such principal moneys; and the sums so from time to time set aside, and all moneys applied in augmentation thereof, and the proceeds thereof respectively, shall be applied and dealt with, for the purpose of paying off such principal moneys as aforesaid, in manner by this Act provided (*b*) with respect to sums set aside for the purpose of providing a sum for paying off mortgages granted under this Act, and the sums to be so set aside shall be raised by such board in manner aforesaid.

Where metropolitan commissioners of sewers have incurred expenses to be paid by improvement rates, &c., the metropolitan board may levy such rates as remain due.

182. Where the metropolitan commissioners of sewers have incurred any expenses authorized by the said Act of the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve, to be paid by an improvement rate, or as charges for default (*c*), it shall be lawful for the metropolitan board of works (*d*) to levy improvement rates or charges for default for the recovery of the whole of such expenses, or such portion thereof as shall still remain due and unpaid, in the manner directed by the said Act, and the said board shall have all the rights and remedies for the recovery thereof which are now vested in the metropolitan commissioners of sewers in this behalf.

General Powers to Metropolitan and District Boards and Vestries to borrow.

Power to

183. It shall be lawful for the metropolitan board (*e*) and every

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held that the precept and a rate made pursuant to it were bad on the face of them as purporting to be made for purposes for which the parish was not liable to be rated; *R.* v. *Ingham*, 32 L. J. M. C. 214; 4 B. & S. 205.

(*a*) Those provisions are contained in the 161st and following sections; and see section 168, empowering the board to appoint persons to levy on default. The metropolitan board has power under this enactment to appoint a person to make a rate on parishes beyond the metropolis as defined by this Act, but within the limits of the metropolitan sewers commissioners; *R.* v. *Glossop*, 32 L. J. M. C. 92.

(*b*) See sections 190, 191.

(*c*) The chief provisions relating to improvement rates and charges for default were contained in 11 & 12 Vict. c. 112, ss. 46, 48, 49, 50, 54, 82; 12 & 13 Vict. c. 93, s. 11, and 18 Vict. c. 30, s. 30.

(*d*) The 11 & 12 Vict. c. 112, ss. 132, 141, empowered the commissioners to raise these sums by distress and sale. The powers of the board for the recovery of these rates and charges are now to be exercised by the appeal committee. See 25 & 26 Vict. c. 102, s. 30, *post*.

(*e*) The Metropolitan Board of Works (Loans) Act, 1869, 32 & 33 Vict.

district board and vestry, for the purposes of defraying any expenses incurred or to be incurred by them in the execution of this Act (*f*), to borrow and take up at interest, on the credit of all or any of the moneys or rates authorized to be raised by them under this act, any sums of money necessary for defraying any such expenses; and for the purpose of securing the repayment of any sums so borrowed, together with such interest as aforesaid, such board or vestry may mortgage and assign over to the persons by or on behalf of whom such sums are advanced the respective moneys or rates upon the

Section 183.

boards and vestries to borrow money on mortgage.

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c. 102, s. 50 (see the Act, *post*, Appendix), repeals (except as to securities, &c., granted before the Act) so much of this section as relates to the mode of borrowing by the metropolitan board, and the whole of the succeeding sections from 184 to 191 inclusive, so far as regards the same body.

And section 3 enacts that the metropolitan board shall not, except for such temporary period as the Treasury may from time to time sanction, raise otherwise than in conformity with that Act, and with the sanction of the Treasury, any money under any powers of borrowing conferred by the Acts mentioned in the 1st schedule to the Act or otherwise.

By section 4 the board may, for the purpose of raising such portions of the loans authorized by the Acts mentioned in the 1st schedule, as the Treasury may from time to time sanction, create capital stock to be called Metropolitan Consolidated Stock, and the Act contains provisions as to security, application of the money raised, and other matters.

The Acts enumerated in the 1st schedule above referred to under which the board had borrowed money are classified as General Improvement Acts, Main Drainage Acts, Fire Brigade Act, and Embankment Acts.

The 46th section of the Metropolitan Board of Works (Loans) Act, 1869 empowers the board, in lieu of consolidated stock, to create terminable annuities subject to the conditions therein mentioned.

By 40 & 41 Vict. c. 52 (1877), the metropolitan board, with the consent of the Treasury, were authorized to raise moneys not exceeding the sum therein limited, by the issue of metropolitan bills in manner and subject to the conditions therein mentioned relating to payment, mode of issue, and other particulars. See notes to Metropolitan Board of Works (Loans) Act, 1869, *post*, Appendix. The Metropolitan Board of Works (Loans) Act, 1869, s. 37, empowered the metropolitan board to borrow money with the sanction of the treasury, and also to lend money to the managers of the metropolitan asylum district which they required to borrow under the Metropolitan Poor Act.

The 38 & 39 Vict. c. 65 (1875) authorized the board to lend money to any corporation, body of commissioners, burial board, or other public body having power to levy rates in respect of lands in the metropolis; it also contained provisions relative to the powers of the board for raising money and other purposes, which were limited in time and amount. See a reference to these Acts in notes to Metropolitan Board of Works (Loans) Act, 1869, *post*, Appendix.

(*f*) By section 72 of 25 & 26 Vict. c. 102, *post*, vestries and district boards are empowered, with the consent of the metropolitan board, to borrow money for improvements within their parish or district.

The 34 & 35 Vict. c. 47 authorizes the metropolitan board, with the consent of the Treasury, to lend to, amongst other bodies, vestries and district boards for works to be executed which appear to the board and Treasury to be permanent works.

The 38 & 39 Vict. c. 65 (1875), an Act for the amendment of the Acts relating to the raising of money by the metropolitan board and other purposes, contained provisions limiting the powers of the board to lend money in time and amount; and an Act has since been passed annually authorizing the board to raise and expend the amounts limited by the act for, amongst other purposes, loans to vestries and district boards.

Section 183. credit of which such sums are borrowed (*a*); and the respective mortgagees shall be entitled to a proportion of the moneys or rates comprised in their respective mortgages, according to the sums in such mortgages mentioned to have been advanced; and each mortgagee shall be entitled to be repaid the sum so advanced, with interest, without any preference over any other mortgagee or mortgagees by reason of any priority of advance or the date of his mortgage: Provided always, that no moneys shall be so borrowed by any district board or vestry without the previous sanction in writing of the said metropolitan board.

No priority amongst mortgagees.

Power to commissioners acting under 14 & 15 Vict. c. 23, to make advances (*b*).

184. It shall be lawful for the commissioners acting in the execution of an Act passed in the session holden in the fourteenth and fifteenth years of Her Majesty, chapter twenty-three, "to authorize for a further period the advance of money out of the consolidated fund to a limited amount for carrying on public works and fisheries and employment of the poor," and any Act or Acts for amending or continuing the same, to make advances to any such boardor vestry upon the security of all or any of the moneys or rates to be raised by them under this Act, and without requiring any further or other security than a mortgage of such moneys or rates.

Form of mortgage (*c*).

185. Every mortgage authorized to be made under this Act shall be by deed duly stamped, truly stating the date, consideration, and the time of payment, and shall be sealed with the seal of the board or vestry, and may be made according to the form (E.) contained in the schedule to this Act annexed, or to the like effect, or with such variations or additions in each case as the board or vestry and the party advancing the money intended to be thereby secured may agree to; and there shall be kept at the office of the board or vestry a register of the mortgages made by them, and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and date thereof, and of the names and descriptions of the parties thereto, as stated in the deed; and every such register shall be open to public inspection during office hours at the said office, without fee or reward; and any clerk or other person having the

Register of mortgages.

(*a*) The 5th section of the Metropolitan Board of Works (Loans) Act, 1869, provides that consolidated stock and all dividends and all sums required for the redemption thereof shall be charged indifferently on the whole of the lands, rents, and property belonging to the board, on all moneys which can be raised by rates, and on the improvement fund, subject as therein mentioned. See as to annuities, same Act, section 46, and as to metropolitan bills, 40 & 41 Vict. c. 52.

By section 22 of the same Act the metropolitan board for the purposes therein mentioned, including those of defraying the principal and interest, and of the sinking funds for any securities granted by the board for the purposes of the Acts enumerated in the 1st schedule, or any of them, shall assess and raise a rate to be called the Metropolitan Consolidated Rate in manner therein mentioned.

(*b*) Repealed as to metropolitan board; see note to section 183. Section 20 of 25 & 26 Vict. c. 102, *post*, empowered the public loan commissioners to lend to metropolitan boards, vestries, &c. By the Metropolitan Board of Works (Loans) Act, 1869, sections 8 & 9, the public works loans commissioners and commissioners for the reduction of the national debt are authorized to lend to the metropolitan board on the security of consolidated stock.

(*c*) Repealed as to the metropolitan board; see note to section 183.

custody of the same, refusing to allow such inspection, shall be liable to a penalty not exceeding £5. Section 185.

186. The board or vestry making any such mortgage may, if they think proper, fix a time or times for the repayment of all or any principal moneys borrowed under this Act, and the payment of the interest thereof respectively, and may provide for the repayment of such moneys, with interest, by instalments or otherwise, as they may think fit; and in case the board or vestry fix the time or times of repayment they shall cause such time or times to be inserted in the mortgage deed; and at the time or times so fixed for payment thereof such principal moneys and interest respectively shall, on demand, be paid to the party entitled to receive the same accordingly; and if no other place of payment be inserted in the mortgage deed, the principal and interest shall be payable at the principal office of the board or vestry, and, unless otherwise provided by any mortgage, the interest of the money borrowed thereupon shall be paid half-yearly; and if no time be fixed in the mortgage deed for the repayment of the money so borrowed, the party entitled to receive such money may, at the expiration or at any time after the expiration of twelve months from the date of such deed, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months previous notice for that purpose; and in the like case the board or vestry may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee shall be given in manner herein provided for service of notices (*e*) on the board or vestry, and if given by the board or vestry shall be given either personally to to such mortgagee or left at his residence, or if such mortgagee or his residence be unknown to them, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the London Gazette; and if the board or vestry have given notice of their intention to pay off any such mortgage at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable thereon, unless, on demand of payment made pursuant to such notice, or at any time thereafter, the board or vestry fail to pay the principal and interest due at the expiration of such notice on such mortgage.

Repayment of money borrowed at a time agreed upon (*d*).

Interest on mortgages to be paid half-yearly.

As to repayment of money borrowed when no time has been agreed upon.

Interest to cease on expiration of notice to pay off a mortgage debt.

187. It shall be lawful for the said metropolitan board, with respect to any security granted by the metropolitan commissioners of sewers, or granted by such board under this Act, and for every district board and vestry, with respect to any security for any existing debt or liability which such board or vestry are by this Act required to discharge, and any security granted by such board or vestry under this Act, to raise and borrow the moneys necessary for paying off such security, and to pay off the same; and the moneys borrowed for the purpose of such payment shall be secured and paid in like manner as if borrowed for defraying the expenses of the execution of this Act: Provided always that nothing herein contained shall extend to authorize the paying off of any security otherwise than in accordance with the provisions thereof.

Power to borrow to pay off existing securities (*f*).

(*d*) Repealed as to the metropolitan board; see note to section 183.

(*e*) The mode of serving notices on boards and vestries is provided for b section 220.

(*f*) Repealed as to metropolitan board; see note to section 183.

Section 188.

Payment of principal and interest may be enforced by the appointment of a receiver (*a*).

188. If at the expiration of six months from the time when any principal money or interest has become due upon any mortgage made under this Act, or under the said Act of the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve, or any Act continuing or amending the same, and after demand in writing, the same be not paid, the mortgagee may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to two justices, who are hereby empowered, after hearing the parties, to appoint, in writing under their hands and seals, some person to collect and receive the whole or a competent part of the moneys or rates liable to the payment of the principal or interest in respect of which the application is made, until such principal or interest, or both, as the case may be, together with the costs of the application and the costs of collection, are fully paid; and upon such appointment being made all such moneys or rates, or such competent part thereof as aforesaid, shall be paid to the person appointed, and when so paid shall be so much money received by or to the use of the mortgagee or mortgagees, and shall be rateably apportioned between or among them, but subject and without prejudice to such right of priority, if any, as shall then be subsisting between the mortgagees or any of them: Provided always, that no mortgagee shall be prejudiced, either directly or indirectly, by any loss which may be occasioned by the mis-application or non-application of any moneys or rates received by any receiver appointed otherwise than upon the application or with the express consent of such mortgagee, or by any act, deed, neglect, or default on the part of such receiver, but such loss shall be wholly borne by the mortgagee or mortgagees upon whose application or with whose express consent such receiver was appointed: Provided also, that no such application shall be entertained unless the sum or sums due and owing to the applicant amount to one thousand pounds, or unless a joint application be made by two or more mortgagees to whom there may be due, after such lapse of time, and demand, as last aforesaid, moneys collectively amounting to that sum.

Transfer of mortgages (*b*).

189. Any mortgagee or other person entitled to any mortgage under this Act may transfer his estate and interest therein to any other person by deed duly stamped, truly stating its date, the names and descriptions of the parties thereto, and the consideration for the transfer; and such transfer may be according to the form contained in the schedule (F.) to this Act annexed, or to the like effect; and there shall be kept at the office of every board and vestry making

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(*a*) Repealed as to the Metropolitan Board of Works; see note to section 183.

The Metropolitan Board of Works (Loans) Act, 1869, section 40, provides for the appointment by the Court of Chancery of a receiver, in case of default for not less than two months in the payment of dividends on stock or interest on securities granted by the board, and defines his powers as to the collection and application of moneys liable to be carried to the Consolidated Loans Fund, &c. See the Act, *post*, Appendix.

See a declaration in an action against a local board of health, claiming a writ of *mandamus* commanding them to make and levy a rate for the payment of a debt; *Ward* v. *Lowndes*, 28 L. J. Q. B. 265; and refusal of the Court of Chancery to appoint a receiver where money had been borrowed by a corporation, on the security of rates under a local Act; *Preston* v. *Corporation of Great Yarmouth*, L. R. 7 Ch., 655.

(*b*) Repealed as to Metropolitan Board of Works. See note to section 183.

Section 189.

Register of transfers.

any mortgages under this Act a register of the transfers of such mortgages; and within thirty days after the date of any such deed of transfer, if executed within the United Kingdom, or within thirty days after its arrival in the United Kingdom if executed elsewhere, the same shall be produced to the clerk of the board or vestry making the mortgage; and such clerk shall, upon payment of the sum of 5s., cause an entry to be made in such register of its date, and of the names and description of the parties thereto, as stated in the transfer; and upon any transfer being so registered, the transferee, his executors, administrators, or assigns, shall be entitled to the full benefit of the original mortgage, and the principal and interest secured thereby; and every such transferee may in like manner transfer his estate and interest in any such mortgage; and no person, except the person to whom the same has been last transferred, his executors, administrators, or assigns, shall be entitled to release or discharge any such mortgage, or any money secured thereby.

Sinking fund to be formed for paying off mortgages (c).

190. For the purpose of providing a fund for paying off mortgages granted under this Act, the board or vestry granting such mortgage shall once in every year set aside, out of the moneys or rates charged thereby, such sum as they think proper, being not less than £2 per centum on the amount of the principal moneys secured thereby; and the sum so from time to time set aside, and all other moneys applied by the board or vestry in augmentation of the said fund, shall be applied, in the manner hereinafter directed, in payment, so far as the same will extend, of the principal money secured by such mortgages, or the same shall be invested in the public funds, or on government or real security, in the name of the board or vestry; and the dividends and interest of the moneys so invested, when and as the same become due, shall from time to time be received and invested in like manner, in order that the said moneys so set aside and invested may accumulate at compound interest; and when such accumulated fund amounts to a sum which, in the opinion of the board or vestry, can be conveniently applied for that purpose, the stocks, funds, or securities whereon the same is invested shall be sold, or otherwise converted into money, and the moneys arising from any such sale and conversion shall be applied in the manner hereinafter directed, in payment, so far as the same will extend, of the said principal moneys, and so from time to time until the whole of the said principal moneys are discharged.

Mode of paying off mortgages (d).

191. When and as often as the board or vestry are enabled and think it expedient to pay off one or more of the said mortgages, they shall cause the several numbers of such mortgages, to be written upon distinct slips of paper of an equal size, and all such slips shall be rolled or folded up in a similar form, and put in a box, and the clerk of the

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(c) Repealed as to the metropolitan board. See note to section 183. Section 3 of the Metropolitan Board of Works (Loans) Act, 1869, enacts that for the purpose of paying the dividends on and redeeming consolidated stock created under that Act, there shall be established a fund to be called the consolidated loan fund of the metropolis, and subsequent sections contain provisions as to the moneys to be carried to the credit of the fund, redemption of consolidated stock, application and investment of fund, keeping accounts, sharing, appropriation of moneys, &c. And see section 29 as to the application of Thames Embankment Fund.

(d) Repealed as to metropolitan board. See note to section 183.

Section 191.

said board or vestry shall, at a meeting of the board or vestry, draw separately out of the said box one of the said slips, and thereupon the mortgage corresponding with the number so drawn shall be paid off by the board or vestry; and after every such ballot the board or vestry shall cause a notice, signed by the clerk, to be given to the person entitled to the money to be paid off, and such notice shall express the principal sum proposed to be paid off, and that the same will be paid, together with the interest due thereon, at a place to be specified in such notice, at the expiration of six months from the date of giving such notice; and at the expiration of such period the interest of the principal money to be paid off shall cease, unless such principal money and interest be not paid, on demand, pursuant to such notice; but such principal money, and the interest thereof to the end of the said six months, shall nevertheless be payable, on demand.

Audit of Accounts.

Accounts of metropolitan board district boards, and vestries to be balanced up to the end of each year.

192. The metropolitan board of works, every district board, and the vestry of every parish mentioned in either of the schedules (A.) and (B.) to this Act, shall, in the month of April in every year, cause their accounts to be balanced up to the twenty-fifth day of March next preceding, and shall cause a full statement and account to be drawn out of the amount of all contracts entered into and of all moneys received and expended by them during the preceding year, under the several distinct heads of receipt and expenditure, and also of all arrears of rates and other moneys then owing to such respective board or vestry, and of all mortgages and other debts and liabilities then owing by such board or vestry: Provided always, that where by reason of the time established by or under any local Act for making and collecting rates in any parish the time hereby fixed for making up the accounts is inconvenient, it shall be lawful for the metropolitan board of works to order that the time of making and collecting such rates, and the period for which any such rate may be made, shall be altered as to the said board may appear convenient.

Auditor of accounts of metropolitan board to be appointed by secretary of state, and remunerated by the board.

193. One of Her Majesty's principal secretaries of state shall, in the month of April (*a*) in every year, by order under his hand, appoint some fit person to be the auditor of the accounts of the said metropolitan board for the preceding year; and every such auditor shall be paid by such board not exceeding five guineas for every day he is fully employed on such audit, and all expenses he is put to in the auditing of such accounts; provided always, that such payment shall not exceed fifty guineas (*b*).

(*a*) By section 18 of Metropolitan Board of Works (Loans) Act, 1871, the auditor of the accounts of the metropolitan board is to be appointed by the Treasury instead of by the Secretary of State in such month as shall be convenient to the Treasury.

(*b*) So much of this section as relates to the payment of the auditor was repealed by 25 & 26 Vict. c. 102. s. 114, *post*, which directed that he should be paid five guineas per day and his expenses, but so that such payments should not exceed one hundred guineas. By the Metropolitan Board of Works (Loans) Act, 1875, section 15, the auditor shall be paid not exceeding one hundred guineas, as the Treasury shall direct.

Section 194.

Auditors to be elected annually by the district boards.

194. Every district board shall, in the month of April in every year, elect by ballot from among the persons acting as auditors for the parishes in the district three persons, not being members of such board, to be auditors for the current year of the accounts of such board; and in case of the death of any such auditor, the board by whom he was elected shall forthwith elect in a similar manner some other such person as aforesaid in his place, and the powers hereby given to the said auditors may be exercised by any two of them.

As to the audit of accounts.

195. The auditor of the accounts of the said metropolitan board, and the auditors of the accounts of every district board and every such vestry as aforesaid, shall, in the month of May (*c*), on such day or days as shall be fixed by him or them for the audit of such respective accounts, attend at the office or principal office of the metropolitan board of works, or of such district board or vestry (as the case may require), for the purpose of auditing their accounts; and such respective boards and every such vestry shall, by their clerks, treasurers, and other officers, produce and lay before such auditor or auditors at every such audit their accounts for the year preceding, together with the statement and account hereinbefore mentioned, accompanied by proper vouchers for the support of the same, and submit to his or their inspection all books, papers, instruments, and writings in their custody or control relating thereto (*d*); and such auditor or auditors, in the presence of such of the members of such respective boards or vestries and of the ratepayers and creditors on the rates as desire to attend, shall audit the accounts hereinbefore mentioned, and may examine any of the members of such respective boards or vestries or their officers whom he or they shall deem accountable (and whom he and they is and are hereby empowered to summon, by writing under his or their hand or hands, or under the hand of any one of them, to appear before him or them for the purpose of such examination), touching the said accounts, and shall also hear any complaint (*e*) which any such ratepayer or creditor shall at the time of such audit make touching such accounts; and such auditor or auditors shall have full power to examine, audit, allow, and disallow the said accounts and items therein, and shall charge in such accounts all sums (if any) which ought to be accounted for, and are not brought into account; and if such accounts be found correct, such auditor or auditors, or the major part of them, shall sign the same in token of his or their allowance thereof, and such allowance shall be final and conclusive on all parties (*f*).

(*c*) See note (*a*) to section 193, *ante*.

(*d*) A *mandamus* calling on justices to produce "the accounts" (without limit as to time) held bad; *R.* v. *Church Trustees of St. Pancras*, 6 Ad. & E. 314, and see *R.* v. *Wilts Canal Company*, 3 A. & E. 477.

(*e*) See *R.* v. *Strand District Board*, 33 L. J. M. C. 33, 4 B. & S. 526, cited in note to section 160, *ante*.

(*f*) The provision making the allowance of the auditor final and conclusive is impliedly repealed, as to the accounts of vestries and district boards, by the 38th section of 25 & 26 Vict. c. 102, *post*, enabling the allowance, disallowance, or surcharge of the accounts of those bodies to be recovered by *certiorari*. As to quashing of disallowance by auditor of a sum for extra clerks in preparing a valuation list charged in poor rate, refer to *R.* v. *Overseers of Medlock*, 40 J. P. 536.

Where justices refused to enforce the entire surcharge of a poor law auditor on proof that part of the amount had been paid by the overseer, it

Section 196.

Abstract of accounts to be made.

196. The auditor or auditors of the accounts of the metropolitan board of works, and of every district board and vestry, shall, after such audit of accounts as aforesaid, cause an account in abstract to be prepared, showing the receipt and expenditure under this Act for the preceding year, under the several distinct heads of receipt and expenditure, with the statement of the allowance of the auditor or auditors, if he or they has or have allowed such accounts, or of the parts, if any, which he or they have disallowed of such accounts, and also a summary statement of all contracts entered into by such board or vestry in such preceding year, and of the moneys owing to and debts and liabilities owing by such board or vestry on the 25th day of March next preceding.

Accounts of other parochial boards to be audited by the auditors elected under this Act.

197. In all parishes mentioned in the schedules (A.) and (B.) to this Act, in which other boards have control over any part of the parochial expenditure, the auditors of accounts of the parish elected under this Act shall have the same power of examining the accounts and officers of the said boards as of examining the accounts and officers of the vestry, and shall audit the accounts of the said boards in the same manner as they audit the accounts of the vestry, and the accounts of the said boards shall not be subject to any other audit: Provided always, that nothing herein contained shall apply to accounts which if this Act had not been passed would have been subject to the audit of any auditor already or hereafter appointed under the authority of the Act of the session holden in the fourth and fifth years of King William the Fourth, chapter seventy-six, or any Act incorporated therewith (*a*).

Annual Reports.

Annual reports by vestries and district boards.

198. Every such vestry as aforesaid and district board shall, in the month of June in every year, cause to be printed the said account in abstract and summary statement for the preceding year, relating to such vestry or board, and also make and cause to be printed therewith a report of their proceedings in the execution of this Act, and of the works commenced and completed respectively in the preceding year by such vestry or board, and the works remaining in progress at the termination of such year, and also of any proceedings taken by them or under their authority in the preceding year, in pursuance of any regulations of the general board of health for the time being in force, or otherwise, for the removal of nuisances or the improvement

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was held to be open to the person surcharged to show what he had in fact paid if he could do so without contradicting the auditor's certificate, and that the justices were right; *R.* v. *Fordham*, L. R. 8 Q. B. 501, and see *R.* v. *Finnis*, 28 L. J. M. C. 201; *R.* v. *Linford*, 7 E. & B. 950; *Barton* v. *Piggott*, L. R. 10 Q. B. 86.

By 37 & 38 Vict. c. 97, s. 22, the metropolitan board are empowered to defray certain expenses connected with erecting structures, &c., on Thanksgiving Day, which had been disallowed.

(*a*) This proviso was held not to be repealed by the 3rd section of 19 & 20 Vict. c. 112, *post*, and the power to order the appointment of an auditor remained in the poor law commissioners; *R.* v. *Directors of the Poor of St. Pancras*, 27 L. J. M. C. 281. See also *R.* v. *Governors, &c., of the Poor of St. James's, Westminster*, 28 L. J M. C. 172, affirmed in error, 29 L. J. M. C. 4.

Section 198.

of the sanitary condition of their parish or district; and to every such report there shall be appended a copy of every report made to such vestry or board during the preceding year by the officer or officers of health for their parish or district (*b*); and every such vestry and board shall in the said month of June send a copy of every such account in abstract, statement, and report, together with a printed list of the names and addresses of the members of such vestry and board, and of their officers, to the metropolitan board of works; and every vestry and district board shall permit inspection at their office of a copy of any such account in abstract, statement, and report by any ratepayer in their parish or district, without payment, at all reasonable times, and shall also permit the like inspection by the public generally of such list of officers; and copies of such account in abstract, statement, and report, and list of officers, shall be delivered to any person applying for the same, on payment of such reasonable sums, not exceeding 2*d.* for each such copy, as may be fixed by such vestry or board in this behalf.

Vestry to make out and publish yearly a list of estates, charities, and bequests, &c., with the application thereof (*c*).

199. Every such vestry as aforesaid shall cause to be made out once at least in every year a list of the several freehold, copyhold, and leasehold estates, and of all charitable foundations and bequests, if any, belonging to the parish, and under the control of the vestry, the list to contain a true and detailed account of the place where such estate or charitable foundation may be situate, or in what mode and security such bequest may be invested, specifying also the yearly rental of each, and the particular appropriation thereof, together with the names of the persons partaking of their benefit (except where such benefit shall be allotted to the poor of the parish generally), and to what amount in each case, and also stating the name and description of the persons in whom such estates are vested, and the names and description of the trustees for each charity; and such lists shall be open for the inspection of the ratepayers at the office of the vestry clerk at the same time with the accounts when audited according to the provisions of this Act.

Annual report of metropolitan board of works.

200. The metropolitan board of works shall, in the month of June (*d*) in every year, make a report of their proceedings in the execution of this Act, and shall in the said month send a copy thereof, together with a copy of the said account in abstract and summary statement for the preceding year relating to such board, to one of Her Majesty's principal secretaries of state, to the commissioners of Her Majesty's works and public buildings, to the general board of health, to the lord mayor of the city of London, and to each of the vestries and district boards in the other parts of the metropolis.

(*b*) The 43rd section of 25 & 26 Vict. c. 102, *post*, provides that the officer or officers of health shall make an annual report to the vestry, or district board, on the sanitary condition of the parish, &c., and that it shall not be necessary to append thereto a copy of any other report of such officer or officers.

(*c*) See 18 & 19 Vict. c. 124, s. 44, requiring the trustees of parochial charities to deliver a copy of the accounts to the churchwardens of the parishes.

(*d*) By the Metropolitan Board of Works (Loans) Act, 1871, s. 16, December is substituted for June, and a copy of the report and other documents above mentioned are to be sent to the treasury.

Section 201.

Reports, &c., of metropolitan board to be laid before parliament.

201. Every such report, account in abstract, and statement to be sent to one of Her Majesty's principal secretaries of state as aforesaid shall be laid before both houses of parliament within one month after the receipt thereof if parliament be sitting, or if parliament be not sitting, then within one month after the next meeting of parliament.

Bye-laws.

Power to metropolitan board of works to make bye-laws.

202. The metropolitan board of works and every district board and vestry respectively may from time to time make, alter, and repeal bye-laws for all or any of the purposes following; (that is to say,) for regulating the business and proceedings at their meetings and of committees appointed by them, the appointment and removal of their officers and servants, and the duties, conduct, and remuneration of such officers and servants; and the said metropolitan board may also from time to time make, alter, and repeal bye-laws (*a*) for regulating the plans, level, width, surface inclination, and the material of the pavement and roadway of new streets and roads (*b*), and the plans and level of sites for building (*c*), and for regulating the dimensions, form, and mode of construction, and the keeping, cleansing, and repairing of the pipes, drains, and other means of communicating with sewers, and the traps and apparatus connected therewith (*a*); for the emptying, cleansing, closing, and filling up of cesspools and privies; and for other works of cleansing, and of removing and disposing of refuse (*d*); and for regulating the form of

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(*a*) The 25 & 26 Vict. c. 102, s. 83, *post*, empowers the metropolitan board to make bye-laws for the guidance, direction, and conduct of vestries, &c., in relation to the works, dimensions, construction, &c., of sewers and for the other objects enumerated in the 138th section of this Act. By the Metropolis Management and Building Act Amendment Act, 1878, section 16, the metropolitan board are empowered to make bye-laws with respect to the foundations and sites of houses, buildings, &c., the qualities of substances of which walls are to be constructed, the duties of district surveyors, the amount of fees, &c. Bye-laws under that power were made by the metropolitan board on the 10th January, 1879 (Minutes, p. 43), subject to confirmation of the same by the Secretary of State for the Home Department. A reference to bye-laws made by the board under special Acts of parliament will be found in the notes to the Acts in the Appendix, *post*.

(*b*) See 25 & 26 Vict. c. 102, s. 98, *post*, as to the width of existing roads hereafter formed or laid out for building as streets. The Metropolis Management and Building Act Amendment Act, 1878, prohibits the construction of houses at less than the prescribed distance from centre of roads, passages, or ways not being highways.

(*c*) See 25 & 26 Vict. c. 102, s. 85, *post*, restricting the height of buildings in certain situations. A bye-law under Local Government Act, 1858, section 34, requiring fourteen days' notice to the surveyor of the board by a person intending to erect a new building, with details of plans and sections, was held to be within the powers conferred by the Act; *Hall* v. *Nixon*, L. R. 10 Q. B. 152. And see remarks in that case on *Young* v. *Edwards*, 33 L. J. M. C. 227, and *Hattersley* v. *Burr*, 4 H. & C. 523; and *Pearson* v. *Kingston-upon- Hull Local Board*, 35 L. J. M. C. 36.

As to bye-law requiring certain distance between a building and the opposite property, see *Anderton* v. *Birkenhead Improvement Commissioners*, 32 L. J. M. C. 137.

The power given by 21 & 22 Vict. c. 98, s. 34, to make provision as to removing, altering, or pulling down buildings might be extended to and incorporated in bye-laws as to notice and deposit of plans; *Baker* v. *Mayor*

Section 202.

appeal and mode of proceeding thereon; and generally for carrying into effect the purposes of this Act; and every such board and vestry may thereby impose such reasonable penalties (*e*) as they think fit, not exceeding 40s., for each breach of such bye-laws, and in case of a continuing offence a further penalty not exceeding 20s. for each day after notice of the offence from the board or vestry: Provided always, that under every such bye-law it shall be lawful for the justices before whom any penalty imposed thereby is sought to be recovered to order the whole or part only of such penalty to be paid, or to remit the whole penalty: Provided also, that no bye-laws shall be repugnant to the laws of England or to the provisions of this Act; and that no bye-law shall be of any force or effect unless and until the same be submitted to and confirmed at a subsequent meeting of the board or vestry: Provided also, that no penalty shall be imposed by any such bye-law unless the same be approved by one of Her Majesty's principal secretaries of state (*f*).

Penalty for breach of bye-laws.

Power of justices to remit penalties.

203. All bye-laws made and confirmed as aforesaid in pursuance of this Act shall be printed, and hung up in the principal office of the board or vestry, and be open to public inspection without payment, and copies thereof shall be delivered to any person applying for the same, on payment of such sum, not exceeding 2*d.*, as the board or vestry shall direct; and such bye-laws, when so published, shall be binding upon and be observed by all parties, and shall be sufficient to justify all parties acting under the same; and the production of a printed copy of such bye-laws, authenticated by the seal of the board or vestry, shall be evidence of the existence, and of the due making, confirmation, and publication of such bye-laws, in all prosecutions under the same, without adducing proof of such seal or of the fact of such confirmation or publication of such bye-laws.

Publication of bye-laws.

Evidence of bye-laws.

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of Portsmouth, 41 J. P. 278, L. R. 3 Ex. D. 4; and see *Slee* v. *Mayor of Bradford*, 8 L. T. (N.S.) 491.

A bye-law under section 34 of Local Government Act, 1858, prohibiting the building of a dwelling-house without having at rear or side a sufficient roadway for access to the privy or ashpit, was held invalid; *Waite* v. *Garston Local Board*, L. R. 3 Q. B. 5.

A conviction under a bye-law under a local Act incorporating Public Health Acts, 1848 and 1858, for not giving notice of intention to erect a building meant for temporary purposes only, was held void; *Fielding* v. *Rhyl Improvement Commissioners*, L. R. 3 C. P. D. 272.

(*d*) A bye-law by a local board of health requiring a covered receptacle for dung, held reasonable; *Wanstead Local Board* v. *Wooster*, 37 J. P. 604.

(*e*) See section 227 as to the recovery of these penalties. Where a person had been convicted and fined for building a party wall in contravention of a bye-law of a local board under Public Health Act, 1848, it was held that he could not be convicted as for a continuing offence, for suffering the party wall to remain unaltered; *Marshall* v. *Smith*, L. R. 8 C. P. 416. By section 158 of Public Health Act, 1875, the existence of the work during its continuance in contravention of a bye-law rendering the offender liable to a penalty shall be deemed a continuing offence, but a penalty shall not be incurred in respect thereof after the expiration of one year from the day of the commission of the offence or when the bye-law was broken.

(*f*) This approval does not render a bye-law *ultra vires* valid; *R.* v. *Wooding*, 5 E. & B. 49.

Section 204.

Provisions for Protection of Property and Works of Metropolitan and District Boards and Vestries, and preventing Obstruction in Execution of Works.

Buildings not to be made over sewers without consent.

204. No building (*a*) shall be erected in, over, or under any sewer (*b*) vested in the metropolitan board of works, or in any vestry or district board, without their consent first obtained in writing, and if any building be erected contrary to this provision the board or vestry in whom such sewer is vested may demolish the same, and the expenses incurred thereby shall be paid by the person erecting such building.

Penalty on persons sweeping dirt into sewers (*c*).

205. No scavenger, or other person shall sweep, rake, or place any soil, rubbish, or filth, or any other thing, into or in any sewer or drain, or over any grate communicating with any sewer or drain, or into any dock or inlet communicating with the mouth of any sewer or drain, or into which any sewer or drain may discharge its contents, or into the river Thames contiguous thereto; and every scavenger or other person who shall so offend shall for every such offence forfeit and pay any sum not exceeding £5.

(*a*) As to a building within the meaning of Metropolis Building Act, 1855, see *Stevens* v. *Gourley*, 29 L. J. C. P. 1. Within section 27 of 2 & 3 Will. 4, c. 45, *Powell* v. *Farmer*, 34 L. J. C. P. 71; *Powell* v. *Boraston*, 34 L. J. C. P. 73. Factory Act, 1867, *Redgrave* v. *Lee*, 43 L. J. M. C. 105; *Bowes* v. *Law*, L. R. 9 Eq. 636; *Morish* v. *Harris*, L. R. 1 C. P. 155.

(*b*) The marsh wall or embankment keeping back the river Thames at high water from inundating the Isle of Dogs, and through which sewers pass to drain the isle at low water, was held to be "a sewer" within the meaning of this section; *Poplar District Board of Works* v. *Knight and another*, 28 L. J. M. C. 37, per Lord *Campbell*, C. J., and *Erle*, J., *Crompton*, J., doubting. In an award under the Public Health Act, 1848, section 128, containing a similar provision, it was decided that the arbitrator, in assessing compensation for damage, might take into consideration the prospective depreciation of the property by reason of this prohibition; *Uttley* v. *Todmorden Local Board*, 44 L. J. C. P. 19. See sections 68 and 69 of 25 & 26 Vict. c. 102, *post*, giving extended powers to the metropolitan board and vestries and district boards in cases of unauthorized interference with sewers, banks, defences, &c.

(*c*) The 2 & 3 Vict. c. 47 (Metropolitan Police), s. 60, imposes a penalty of 40s. on every person who throws or lays any dirt, litter, or ashes, or any carrion, fish, offal, or rubbish, or throws or causes any such thing to fall into any sewer, pipe, or drain: and see 57 Geo. 3, c. 29, s. 62, *post*, Appendix. The Thames Conservancy Act, 1857, 20 & 21 Vict. c. 147, s. 102, enacts that every person who shall unload, put, or throw into any part of the river Thames, or on any shore or ground below the high water mark of the river Thames, any rubbish, earth, ashes, dirt, mud, soil, or other matter, or allow any offensive matter to flow into the river Thames, shall forfeit for every such offence any sum not exceeding £20.

The owner of a vessel was held liable for the act of one of the crew in throwing mud into the river contrary to the Thames Conservancy Act, 1864, section 74, though the act was done in his absence and without his knowledge; *Flowers* v. *Raine*, 30 J. P. 135; and see *R.* v. *Stephen*, 30 J. P. 822.

Where a tanner discharged refuse of trade into a natural stream, a conviction under a navigation Act, 14 Geo. 3, c. 96, was held bad on the ground that the enactment only applied to artificial streams; and also per

Section 206.

Penalty for wilfully damaging, &c., lamps or other property of vestries or district boards, or of the metropolitan board (*d*).

206. If any person wilfully take away, break, throw down, or damage any lamp set up for lighting any of the streets in any parish mentioned in either of the schedules (A.) and (B.) to this Act, or wilfully extinguish the light within the same, or damage the iron or other furniture thereof, or wilfully damage any other property vested in any vestry or district board, or any property vested in the said metropolitan board, it shall be lawful for any person who sees such offence committed to seize, as also for any other person to assist in seizing, the offender, and by authority of this Act, and without any other warrant, to convey him, or to deliver him into the custody of a police officer in order to be secured and conveyed before some justice; and if the party accused be convicted of such offence he shall forfeit the sum of 40s., and shall also pay to such vestry or board the amount of damage done.

Persons carelessly or accidentally damaging lamps, &c., to make satisfaction.

207. In case any person carelessly or accidentally (*e*) break, throw down, or damage any such lamp, or the iron or other furniture thereof, or other such property as aforesaid, he shall pay the amount of damage done.

Penalty on interrupting workmen, &c., in execution of duties.

208. If any person at any time, obstruct, hinder, or molest any surveyor, inspector, collector, or other officer, workman, or person whomsoever, employed by virtue of this Act, in the performance or execution of his duty, every such person so offending shall for the first offence forfeit and pay the sum of 5s., for the second offence the sum of 20s., and for any subsequent offence the sum of £5 (*f*).

Penalty upon occupiers obstructing execution of works, or not disclosing owner's name.

209. If the occupier of any premises prevent the owner thereof from carrying into effect, with respect to such premises, any of the provisions of this Act, or any order of any vestry or district board made in pursuance thereof, he shall be liable to a penalty not exceeding £5 for every day during the continuance of such refusal or neglect; and if the occupier of any premises, when requested by or on behalf of the vestry or district board to state the name and description of the owner of the premises occupied by him, refuse or wilfully omit to disclose or wilfully mis-state the same, it shall be lawful for

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Bramwell, B., on the ground that in discharging refuse in the course of his business, the defendant did not "wilfully" throw soil, &c., into a stream within the meaning of the statute; *Smith* v. *Barnham*, L. R. 1 Ex. D. (C. A.) 419.

The Rivers Pollution Prevention Act, 1876, section 2, subjects to penalties any person who puts or causes to be put, &c., or knowingly permits to be put, &c., into any stream, so as either singly or in combination with other similar acts of the same, or any other person, to interfere with its due flow or pollute its waters, the solid refuse of any manufactory, manufacturing process, or quarry, or any rubbish or cinders, or any other waste or any putrid solid matter.

(*d*) See section 90 of 25 & 26 Vict. c. 102, *post*, as to penalties for defacing posts, buildings, &c., of vestries and district boards, defacing or injuring notice boards, &c.; and sections 68 and 69 of 25 & 26 Vict. c. 102, as to penalties in case of wrongful interference with sewers; and see section 70 as to penalties for wilfully fouling water in, or wilfully damaging drinking fountains.

(*e*) The 58th section of 57 Geo. 3, c. 29, only subjected to penalties persons *wilfully* or *carelessly* knocking down posts and rails, but not where the act was done *accidentally*.

(*f*) As to recovery of penalty, see section 227, *post*.

Section 209. any justice to summon the party to appear before him or some other justice at a time and place to be appointed in such summons ; and if the party so summoned neglect or refuse to attend at the time and place so appointed, or if he do not show good cause for such refusal, or if such wilful omission or mis-statement be proved, the justice before whom the party is so summoned may impose upon the offender a penalty not exceeding £5.

Savings and provisions in local Acts applicable to commissioners of sewers to apply to metropolitan and district boards and vestries.

210. All savings and provisions in turnpike, railway, waterworks, improvement, and other Acts, saving and providing for the rights, powers, and authorities of the commissioners of sewers for any of the parts which shall be within the metropolis as defined by this Act, shall, so far as the same are not inconsistent with the provisions of this Act, continue and be in force in favour of and with reference to the metropolitan board of works and the several district boards of works and vestries having the management of sewers under this Act, and in favour of the commissioners of sewers of the city of London, so far as such savings and provisions respectively are now applicable to them, or to any officer or person so continued by the said board.

Appeals.

Power to appeal against orders and acts of vestries and district boards in relation to construction of works.

211. Any person who deems himself aggrieved by any order of any vestry or district board in relation to the level of any building, or any order or act of any vestry or district board in relation to the construction, repair, alteration, stopping or filling up, or demolition of any building, sewer, drain, watercloset, privy, ashpit, or cesspool (*a*), may, within seven days after notice of any such order to the occupier of the premises affected thereby, or after such act, appeal (*b*) to the metropolitan board of works against the same ; and all such appeals shall stand referred to the committee appointed by such board for hearing appeals as herein provided ; and such committee shall hear and determine (*c*) all such appeals, and may order any costs of such appeals to be paid to or by the vestry or district board by or to the party appealing, and may, where they see fit, award any compensation (*d*) in respect of any act done by any such vestry or district board in relation the matters aforesaid ; provided that no such compensation shall be awarded in respect of any such act which may have been done under any of the provisions of this Act on any default to comply with any such order as aforesaid, unless the appeal be lodged within seven days after notice of such order has been given to the occupier of the premises to which the same relates.

(*a*) The orders of the vestries against which the appeal is given are those made under the 76th and following sections, and under the 143rd section, now repealed by 25 & 26 Vict. c. 102, s. 75, containing provisions with respect to buildings beyond the general line. Appeals under the second part of the Metropolis Management and Building Acts Amendment Act, 1871, are to stand referred to the committee of appeals appointed under this provision with power, amongst other things, of inspection by the district surveyor or any surveyor of foundations, sites, &c., of houses, buildings, or other erections.

(*b*) The jurisdiction of the court of Chancery to interfere by injunction is not ousted by this appeal clause ; *Tinkler* v. *Board of Works for the Wandsworth District*, 27 L. J. Ch. 342.

(*c*) See 25 & 26 Vict, c. 102, s. 29, *post*, empowering the appeal committee to vary the order appealed against.

(*d*) See sections 225 and 226 as to recovery of compensation.

Section 212.

Metropolitan board to appoint a committee for hearing appeals (*e*).

212. The metropolitan board of works shall appoint a committee for the purpose of hearing all such appeals as may be made to the said board as aforesaid, which committee shall have power to hear and decide all such appeals, and the metropolitan board of works shall from time to time fill up any vacancy in such committee, and the chairman of the said board shall, by virtue of his office of chairman, be a member of the said committee in addition to the members appointed by the said board, and shall preside at all meetings of such committee at which he is present; and in case of a vacancy in the office of such chairman, or, in his absence, some other member of the committee shall be chosen to preside, and all the powers of such committee may be exercised by any three of them, and any member of such committee may at any time resign his office.

Retiring Allowances to Officers of Commissioners of Sewers, and Compensations to other Officers.

Power to grant retiring allowances to persons employed under metropolitan commissioners of sewers (*f*).

213. The metropolitan board of works may, if they deem it just, order the payment of retiring pensions or allowances, of such amounts and upon such terms as they deem just, to any officers or persons who have been employed under the metropolitan commissioners of sewers, and who shall not continue to be employed by the metropolitan board of works, or to any officer or person continued by the said board, having regard in the case of persons who have been employed under any of the commissions determined by the issuing of the first commission under the said Act of the eleventh and twelfth years of her Majesty, chapter one hundred and twelve, to their employment under any of such commissions, as well as under the said metropolitan commissioners of sewers, and to pay such pensions or allowances out of such moneys raised by the said metropolitan board under this Act as to them may seem meet.

Compensation to officers of paving boards.

214. Every officer to any commissioners, vestry, or other body whose powers in relation to paving, lighting, watering, cleansing, or improving, or otherwise in relation to the regulation, government

(*e*) By 25 & 26 Vict. c. 102, s. 30, *post*, this committee are to have the rights and remedies of the board with respect to improvement rates for expenses incurred under Metropolitan Sewers Acts. See note to preceding section as to appeals under second part of Metropolis Management and Building Acts Amendment Act, 1871.

(*f*) Nothing contained in the Act 29 Vict. c. 31, providing for superannuation allowances to officers of vestries and boards in the metropolis is to affect the powers conferred by this section. See the Act, *post*, Appendix. A resolution of trustees with statutory powers for the management of a river granting, not under seal, a pension of a specified amount per annum for life to the plaintiff, an officer, on his retirement, was decided to be irrevocable, and where a new body substituted by statute reduced the amount of the pension, the plaintiff was held entitled to recover the difference in an action; *Marchant* v. *Lea Conservancy Board*, 42 L. J. Ex. 141.

An allowance to an officer or constable of the metropolitan police charged on the superannuation fund created by 2 & 3 Vict. c. 42, ss. 22, 23, is not payable as a matter of right, and may be revoked at any time by the secretary of state; *R.* v. *Receiver of Metropolitan Police*, 4 B. & S. 593.

The poor law board, in awarding compensation to the clerk (a solicitor) of a dissolved union, was held entitled to take into consideration collateral advantages, *e.g.* payments for professional charges; *R.* v. *Poor Law Board*, 41 L. J. M. C. 16.

Section 214. or public concerns of any of the parishes mentioned in either of the schedules (A.) and (B.) to this Act, or any part of any of such parishes, are determined by this Act, and any paid surveyor of highways of any of such parishes, shall be entitled within six months after the commencement of this Act to make a claim for compensation in respect of any loss of emoluments arising from the passing of this Act, such claim to be made to the vestry of the parish in case the office of the claimant existed in any parish mentioned in the said schedule (A.), and in other cases to the district board of the district in which the office existed; and it shall be lawful for such vestry or board respectively to inquire, in such manner as they think fit, what were the nature and tenure of the office and the period for which the same has been holden by the claimant, and what were the lawful emoluments in respect of which compensation should be awarded; and the vestry or district board shall award a gross or yearly sum, and, in the case of a yearly sum, for such time as they think just upon consideration of the special circumstances of each case; but no such award shall be final until confirmed by the metropolitan board of works, and one month before any such award is taken into consideration by such board notice of such award shall be given to the party in whose favour the same is made, and such board shall take into consideration any representations which may in the meantime be made to them by the party in whose favour the award is made, and by the vestry or district board making the same, and such further information or representations in relation to the matter of any such award as the said metropolitan board may see fit to require or receive; and such board may confirm such award with or without any alteration therein as to them may seem just; and any person making any such claim to compensation whose claim is rejected by any vestry or district board may, within one month after notice to him of the rejection thereof, appeal against the determination of such vestry or district board to the metropolitan board of works, and such board shall consider all the circumstances of the case, and may, if it appear to them just, award compensation to the claimant in like manner as the vestry or district board are herein empowered to do (*a*); and the determination or award of the said metropolitan board in reference to such claim shall be final; and all compensation awarded as aforesaid shall be paid out of the general rates to be levied under this Act in the parish or particular part of any parish to which the office in respect whereof the compensation is awarded related, so as to charge such parish or particular part therewith in exoneration of other parishes and parts: Provided always, that if any person to whom a yearly sum is awarded by way of compensation as aforesaid be appointed to any office or employment under the vestry of any of the said parishes, or under any district board, or the metropolitan board of works, or in the public service, the payment of the compensation so awarded shall

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(*a*) Where a claimant, whose application had been rejected by a district board, appealed to the metropolitan board, who made an order awarding compensation, which order was brought up by *certiorari* to be quashed, on the ground of a want of jurisdiction, it was held that the question whether the claimant was an officer or not, was necessarily within the appellate jurisdiction of the metropolitan board, and that the *certiorari* had improvidently issued; *R.* v. *Metropolitan Board of Works*, 27 L. J. Q. B. 5. The court also refused a rule for a *mandamus* where the metropolitan board had altogether refused to award any compensation; *R.* v. *Metropolitan Board of Works*, 21 J. P. 69.

Section 214.

be suspended so long as he continues to hold such office or employment if the emoluments thereof be equal to or greater than the amount of the emoluments of the office formerly held by him, and in case the emoluments of the office or employment to which he is appointed be not equal in amount to those of his former office, then no more of such compensation shall be paid to him than will, with the salary of his new appointment, be equal to the emoluments of his former office.

Miscellaneous Clauses.

Where two or more persons are to do any act or pay any sum of money, vestry or district board may apportion the same.

215. Where, under the authority of this Act, two or more persons are or may be directed by any vestry or district board to do or join in doing any act, or to pay or join in paying any sum of money, costs, or expenses, or where any vestry or district board are authorized or think proper to permit two or more persons to join together in doing any act, or paying any sum of money, costs, or expenses, it shall be lawful for the vestry or district board to apportion the matter to be done, or the sum of money, costs, or expenses to be paid, between such persons, in such manner as the vestry or board consider just and reasonable.

Power to vestries and district boards to spread repayment of expenses over a period not exceeding twenty years.

216. In all cases where any vestry or district board is authorized to order any costs, charges, or expenses to be paid by private parties it shall be lawful for such vestry or district board to order and accept payment of such costs, charges, expenses, together with interest thereon after a rate not exceeding £5 for the £100 by the year, by instalments, within such period, not exceeding twenty years in each case, as they may determine (*b*), the amount thereof to be recoverable in the same manner as other expenses are to be recovered under this Act.

Occupiers to pay expenses for which owners are liable, and to be reimbursed out of the rent.

217. (*c*) It shall be lawful for any vestry or district board to require the payment of any costs or expenses which the owner of any premises may be liable to pay under this Act from any person who then or at any time thereafter occupies such premises; and the owner shall allow every such occupier to deduct all sums of money which he so pays, or which are levied by distress, out of the rent from time to time becoming due in respect of the said premises, as if the same had been actually paid to such owner as part of such rent.

Occupier not to be required

218. (*d*) Provided always, that no such occupier shall be required to pay any further sum than the amount of rent for the time being

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(*b*) Where a local board, under section 69 of the Public Health Act, 1868, had elected to treat a proportion of the cost of works in a street, not a highway, as a debt, it was decided that they could not afterwards declare them to be private improvement expenses; *Wilson* v. *Mayor of Bolton*, L. R. 7 Q. B. 105.

(*c*) This and the following two sections are repealed by the 96th section of the 25 & 26 Vict. c. 102. See that and the 97th section for provision as to the payment of expenses to vestries and district boards by owners or occupiers; as to deductions by occupiers from their rent; and as to the deductions by owners or landlords receiving and paying rent; and see 23rd section of Metropolitan Board of Works (Loans) Act, 1869.

(*d*) Repealed; see note to last section.

Section 218. to pay more than the amount of rent owing by him.

due from him, or which, after such demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuse, on application being made to him for that purpose by or on behalf of the vestry or district board, truly to disclose the amount of his rent, and the name and address of the person to whom such rent is payable; but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie upon such occupier.

Agreements between landlord and tenant not to be affected (*b*).

219. (*a*) Provided also, that nothing herein contained shall be taken to affect any contract made or to be made between any owner and occupier of any house, building, or other property whereof it is or may be agreed that the occupier shall pay and discharge all rates, dues, and sums of money payable in respect of such house, building, or other property, or to affect any contract whatsoever between landlord and tenant.

As to service of notices, &c., on metropolitan and district boards and vestries.

220. Any summons or notice, or any writ or other process at law or in equity, or any other matter or thing whatsoever required to be served upon the metropolitan board of works or any district board or vestry, may, unless herein otherwise provided, lawfully be served by delivering the same personally to the clerk of such respective board or vestry, or by leaving the same at the principal office of such board or vestry.

As to service of notices on owners and occupiers and other persons.

221. All notices by this Act required to be given to the owner or occupier of any land or premises, or other person, may be served personally on such owner, occupier, or person, or left with some inmate of his place of abode, and any notice required to be given to any such owner or occupier may, if there be no occupier, be affixed to some conspicuous part of the land or premises, and it shall not be necessary in any notice to any owner or occupier of any land or premises to name such owner or occupier: Provided always, that where there is no occupier, and the owner of any such land or premises, and his place of abode or that of his agent is known to the vestry or board by or on behalf of whom such notice is given, or any of their officers, such notice shall be served on such owner personally, or left with some inmate of his place of abode, or transmitted to such owner through the post office, addressed to him at his place of abode

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(*a*) Repealed; see note to section 217.

(*b*) Though these charges are by the Act thrown upon the owner, the tenant may by the terms of his lease bind himself to pay them. Thus a sub-lessee who takes on the conditions of the original lease, which binds the tenant to pay "all such parliamentary, parochial, and county, district, and occasional levies, rates, assessments, taxes, charges, impositions, contributions, burdens, duties, and services whatsoever as should be taxed, &c.," during the term, cannot deduct from his rent the expenses for making a drain to the premises which have been recovered from him by the district board, as the covenant in the lease throws the burden upon him. See *Sweet* v. *Seager*, 21 J. P. 406; 2 C. B. (N.S.) 119. And where a local Act empowered the tenant to deduct the costs paid by him to the commissioners for paving and flagging footways, but the tenant, in a lease made subsequently to the Act, covenanted to pay all taxes, rates, duties, levies, assessments, and payments whatever: held that these charges were within the covenant; *Payne* v. *Burridge*, 12 M. & W. 727.

or last known place of abode in the United Kingdom, or served on his agent as aforesaid. Section 221.

Authentication of documents.

222. Every notice, demand, or like document given by or on behalf of the metropolitan board of works (*c*), or any vestry or district board, under this Act, may be in writing or print, or partly in writing and partly in print, and shall be sufficiently authenticated if signed by their clerk or by the officer by whom the same is given.

Proof of debts in bankruptcy.

223. If any person against whom the metropolitan board of works, or any district board or vestry, have any claim or demand, become bankrupt, or take the benefit of any Act for the relief of insolvent debtors, it shall be lawful for the clerk or collector, in all proceedings under the bankruptcy or insolvency, to represent such board or vestry, and act in their behalf in all respects as if such claim or demand were the claim or demand of the clerk or collector, and not of such board or vestry.

Tender of amends.

224. If any party have committed any irregularity, trespass, or wrongful proceeding in the execution of this Act, or any Act incorporated therewith, or by virtue of any power or authority given by this Act or such other Act as aforesaid, and if before action brought in respect thereof such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action (*d*).

Compensation, damage, and expenses, how to be ascertained and recovered.

225. In every case where the amount of any damage, costs, or expenses is by this Act directed to be ascertained or recovered in a summary manner, or the amonnt of any damage, costs, or expenses is by this Act directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount shall, in case of dispute, be ascertained and determined by and shall be recovered before two justices (*e*); and the amount of any compensation (*f*) to be made

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(*c*) A notice that the metropolitan board were willing to pay a certain sum for compensation for injury sustained through their works, signed by L. on behalf of S., solicitor of the board, was decided to be sufficient within this section; *see Balls* v. *Metropolitan Board of Works*, 7 B. & S. 177.

(*d*) See 25 & 26 Vict. c. 102, s. 106, *post*, requiring notice of action, &c., to metropolitan board, vestries, district boards, &c., and as to limitation, venue, &c., and notes.

(*e*) By section 14 of 2 & 3 Vict. c. 71 (for regulating the police courts in the metropolis), one of the metropolitan police magistrates may do alone any act which by any law in use, or any law not containing an express provision to the contrary, is directed to be done by more than one justice; but he is not to act at special or petty sessions, &c. The remedy given by this section was held before the Amendment Act, 1862, to be exclusive, and no action lay at the suit of the vestry against the owner for the recovery of such expenses; *Vestry of St. Pancras* v. *Batterbury*, 26 L. J. C. P. 243.

(*f*) The provisions directing payment of compensation are contained in the 68th, 84th, 86th, and 120th sections relating to the functions of vestries and district boards; and the 135th section relating to those of the metropolitan board; and similar provisions are contained in improvement and other Acts relating to the powers and duties of the metropolitan board.

A quarterly tenant at three months notice has no right to have his com-

Section 225. under this Act by the said metropolitan board, or any vestry or district board, shall, unless hererein otherwise provided, be settled, in case of dispute, by and shall be recovered before two justices, unless the amount of compensation claimed exceed £50, in which case the amount thereof shall be settled by arbitration, according to the pro-

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pensation assessed under section 18 of Lands Clauses Consolidation Act; *Syers* v. *Metropolitan Board of Works*, 10 Cox Mag. Ca. 588.

A tenant having one year unexpired of a term of two years cannot proceed under section 68 of the Lands Clauses Consolidation Act, but his claim must be settled by justices; *R.* v. *Great Northern Railway Company*, 40 J. P. 740.

Under the Holborn Valley Improvement Act, incorporating the Lands Clauses Consolidation Act, to determine whether the the compensation should be assessed by a jury or by justices, the length of the interest must be computed from the date of the notice to treat; *Tyson* v. *Lord Mayor of London*, 41 L. J., C. P. 6.

The order of a magistrate giving possession of a house held under a tenancy from year to year may be verbal; *R.* v. *Combe*, 32 L. J., M. C. 67.

A summons before a magistrate to assess compensation under the Lands Clauses Act is not an order for payment of money under Jervis' Act so as to come within the six months limitation; *R.* v. *Hannay*, 44 L. J. M. C. 27; *Rex.* v. *Edmondson*, 17 Q. B. 67 commented on.

A party on whom a notice to treat has been served under section 18 of Lands Clauses Consolidation Act, without a demand for possession, cannot have his compensation assessed under section 121 of that Act; *R.* v. *Stone*, 35 L. J. M. C. 208.

Neither an arbitrator nor a jury has any jurisdiction under the Lands Clauses Act to inquire whether a claimant is entitled to the interest he claims in lands taken. Their function is only to assess the value of the interest; *Brandon* v. *Brandon*, 34 L. J., Ch. 333; and a jury have no jurisdiction to inquire whether the lands have or have not been injuriously affected; *Horrocks* v. *Metropolitan Railway Company*, 4 B. & S. 315; and see *Bradby* v. *Southampton Local Board*, 4 E. & B. 1014; and *Bradford Local Board* v. *Hopwood*, 6 W. R. 818 under the Public Health Act, 1848. But now by the 308th section of the Public Health Act, 1875, in arbitrations under that Act "any dispute as to the *fact of damage* or amount of compensation shall be settled by arbitration." Refer to *R.* v. *Metropolitan Commissioners of Sewers*, 1 E. & B. 694, which was a decision on the 69th section of the 11 & 12 Vict. c. 112, empowering the arbitrator to determine the amount and not the liability; and see *Duke of Buccleuch* v. *Metropolitan Board of Works*, L. R. 3 Ex. 306; *R.* v. *London and North Western Railway Company*, 3 E. & B. 443; *Ware* v. *Regents Canal Company*, 23 L. J. Ex. 145; *Read* v. *Pimlico Railway Company*, 32 L. J. Ex. 167; *Barber* v. *Grantham, &c., Railway Company*, 33 L. J. C. P. 193.

Where an arbitrator, appointed under section 125 of the Public Health Act, 1848, proceeded with the reference notwithstanding objections and the party attended and contested the case under protest, it was decided that the arbitrator had authority to make an award; *Ringland* v. *Lowndes*, 33 L. J. C. P. (Ex. Ch.) 25.

An offer of one sum for compensation *and* costs held bad; *Balls* v. *Metropolitan Board of Works*, 7 B. & S. 177.

See case of *Binney* v. *Metropolitan Board of Works*, cited in Eyre Lloyd's Law of Compensation, note (*o*), p. 269, 4th ed., to the effect that the claimant was not entitled to have a jury under this section if the board objected, when the premises were only *injuriously affected*.

Where the liability was disputed, and the arbitrator proceeded in the absence of the claimant, it was held not to be sufficient to deny jurisdic-

visions contained in the Lands Clauses Consolidation Act, 1845, which are applicable where questions of disputed compensation are authorized or required to be settled by arbitration (*a*). Section 225.

Method of proceeding before justices in questions of damages, &c.

226. Where the amount of any compensation, or of any damage, costs, or expenses, is to be determined by or to be recovered before two justices, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before two justices, at a time and place to be named in such summons; and upon the appearance of such parties, or, in the absence of either of them, upon proof of due service of the summons, it shall be lawful for such two justices to hear and determine the matter, and for that purpose to examine such parties, or any of them, and their witnesses, on oath, and make such order, as well as to costs as otherwise, as to them may seem just.

Penalties, &c., to be recovered as provided by 11 & 12 Vict. c. 43 (*b*).

227. Every penalty or forfeiture imposed by this Act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceedings before any justice in manner provided by the Act of the session holden in the eleventh and twelfth years of Her Majesty, chapter forty-three, "to facilitate the Performance of the Duties of Justices of the Peace out of Session within England and Wales with respect to summary Convictions and Orders."

Damages to be made good in addition to penalty.

228. If through any act, neglect, or default on account whereof any person has incurred any penalty imposed by this Act, any damage to the property of the said metropolitan board, or any vestry or district

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tion, but that some *primâ facie* ground for asserting non-liability should be shown; *Burgess* v. *Northwich Local Board*, 41 J. P. 818.

No compensation can be recovered by action or otherwise for damage under the Lands Clauses Act which might have been foreseen, and ought to have been considered; *Croft* v. *London and North Western Railway Company*, 32 L. J. Q. B. 113.

Where the liability was disputed by a local board, the court granted a writ of *mandamus* to make compensation; *R.* v. *Burslem Local Board*, 6 Jur. (N.S.) 696.

It is a good return to a *mandamus* to a company that the property had not been injuriously affected; *R.* v. *Cambrian Railway Company*, 38 L. J. Q. B. 191; and the same defence may be pleaded in an action; *Read* v. *Pimlico Railway Company*, 32 L. J. Ex. 167.

As to rights of parties in respect of streams, &c., under Waterworks Clauses Act and Lands Clauses Act, see *Stone* v. *Mayor of Yeovil*, 45 L. J. 657; *Bush* v. *Trowbridge Waterworks Company*, L. R. 19 Eq. 291; *Ferrand* v. *Corporation of Bradford*, 20 Jur. (N.S.) 175.

(*a*) The provisions as to the mode of proceeding for settling amount of compensation by arbitration, are contained in the 25th and following sections of 8 Vict. c. 18, to the 37th inclusive.

(*b*) By the 104th section of 25 and 26 Vict. c. 102, *post*, this provision is extended to the recovery of damages, costs, &c., not otherwise provided for.

Under the Act named in this section, these penalties are made recoverable by distress. By the Small Penalties Act, 1865, where an offender is adjudged to pay a penalty not exceeding £5 he may, in case of non-payment, without any warrant of distress, be committed to prison for any term not exceeding the period specified in the scale provided by the Act, unless the fine shall be sooner paid.

A corporate body cannot in general sue for a penalty as a common informer; *Guard. of St. Leonard's, Shoreditch.* v. *Franklin*, 42 J. P. 725

Section 228. board, has been committed by such person, he shall be liable to make good such damage, as well as to pay such penalty; and the amount of such damage, in case of dispute, shall be determined by the justices by whom the party incurring such penalty is convicted, and the payment of the amount of such damage may be enforced in all respects as such penalty.

Transient offenders.

229. It shall be lawful for any officer or servant of the said metropolitan board, or any vestry or district board, and for any police constable, and all persons called by him to his assistance, to seize and detain any person who has committed any offence against the provisions of this Act, or any bye-law made in pursuance thereof, and whose name and residence shall be unknown to such officer or servant or police constable, and convey him with all convenient despatch before some justice, without any warrant or other authority than this Act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

Proceedings not to be quashed for want of form.

230. No act, order, or proceeding in pursuance of this Act, or in relation to the execution thereof, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* (*a*) or otherwise into any of the superior courts, except as herein specially provided.

Parties allowed to appeal to quarter sessions, on giving security.

231. If any person feel aggrieved by any adjudication or determination of any justice or justices with respect to any penalty or forfeiture under the provisions of this Act, such party may appeal to the general or quarter sessions (*b*); but no such appeal shall be entertained unless it be made within four months next after the making such determination or adjudication, nor unless ten days' (*c*) notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal is brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sureties, before two justices, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

Court to make such order as they think reasonable.

232. At the general or quarter sessions for which such notice is given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid to the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable, and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

(*a*) Unless made without jurisdiction. See *R.* v. *Metropolitan Board of Works*, 27 L. J, Q. B. 5; *R.* v. *Broughton L. B. Health*, 12 L. T. (N.S.) 310; *R.* v. *Wood*, 5 E. & B. 49; and *R.* v. *Dickinson*, 26 L. J. M. C. 204.

(*b*) From the language of this and the following section a notice of appeal would apparently not suspend the execution of judgment; see *Ex parte Willmott*, 30 L. J. M. C. 112. See as to statement of a case for the opinion of a superior court, 20 & 21 Vict. c. 42.

(*c*) A notice of appeal against a decision of justices under the Public Health Act, 1875, requires to be given within fourteen days from the time

Section 233.

Penalties to be sued for within six months (*d*).

233. (*d*) No person shall be liable to the payment of any penalty or forfeiture under this Act, or any bye-law made by virtue thereof, for any offence made cognizable before a justice, unless the complaint respecting such offence have been made before such justice within three months next after the commission or discovery of such offence.

Application of penalties.

234. (*e*) If the application of any penalty or forfeiture be not otherwise provided for, one half thereof shall go to the informer, and the remainder shall go to the vestry or district board of the parish or district in which the offence was committed, or if such vestry or board be the informers, the whole of the penalty recovered shall go to them; and all sums which shall go to or be recovered by any such vestry or board on account of any such penalty or forfeiture shall be paid to their treasurer, or otherwise into such bank, to their account, as they may direct, and shall be applicable to the general expenses of the vestry or board; provided that in every case where any vestry or board are liable to any penalty or forfeiture the whole of such penalty or forfeiture shall go to the informer.

Special Provisions and Savings.

Provision for joint action of vestries, and elections out of vestries under local Acts.

235. Where the vestries of any parishes mentioned in either of the schedules (A.) and (B.) to this Act now act jointly or in union, or exercise any powers or privileges jointly or in union, or elect guardians, directors, trustees, or other persons whomsoever whose offices are not expressed to be determined by this Act for any joint purposes, the vestries of such parishes elected under this Act may act jointly or in union, and shall have the like powers and privileges jointly or in union, and elect for such joint purposes in like manner and with the like effect; and where in any of the said parishes any guardians, directors, trustees, or other persons whosoever whose offices are not expressed to be determined by this Act are now by law elected out of the vestry of any such parish, such guardians, directors, trustees, or other persons as aforesaid may be elected out of or from the vestrymen and persons who under this Act are eligible as vestrymen for the same parish; and the office of no such guardian, director, trustee, or other person shall be determined by reason of his ceasing to be a

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when the court pronounced its decision; *R.* v. *Barnet Rural Sanitary Authority*, 45 L. J. M. C. 105; L. R. 1 Q. B. D. 558.

(*d*) This section is repealed by the 107th section of 25 & 26 Vict. c. 102, which provides that complaint must be made within *six* months.

(*e*) This section is repealed by the 105th section of 25 & 26 Vict. c. 102, *post*, which directs payment of any sums or penalties recoverable by metropolitan board on account of or for any vestry or district board to the respective bodies, and makes them applicable to their general expenses, notwithstanding the provisions of 2 & 3 Vict. c. 71, s. 47 (Metropolitan Police Act). See *Wray* v. *Ellis*, cited in note to section 105 of 25 & 26 Vict. c. 102.

Where the Act 3 & 4 Vict. c. 84, conferred upon two justices sitting together publicly in a room in special or petty sessions in any part of the metropolitan police district, except in the divisions assigned to the police courts already established, the powers, &c., of one magistrate at a police court, it was held that the receiver was not entitled to one moiety of a penalty recovered before those justices; *Receiver of Metropolitan Police* v. *Bell*, 41 L. J. M. C. 153; and see note to section 105 of 25 & 26 Vict. c. 102, *post*.

Section 235. vestryman in consequence of the passing of this Act; but every such guardian, director, trustee, or other person shall continue in office until such time as he would otherwise have ceased to hold his office.

Agreement between the London and North-Western Railway Company and certain paving commissioners confirmed.

236. And whereas by an agreement, made on the 10th day of August, 1854, between the London and North-Western Railway Company of the one part, and five of the commissioners acting under certain Acts of parliament relating to the paving and improving of certain streets in the parish of Saint Pancras, in the county of Middlesex, of the other part, it was agreed that the commissioners acting under the said Acts should, in consideration of the payment of the sums of £3,000 and £500 to the said commissioners by the said company, put into good and complete state of repair and condition certain roads therein particularly mentioned, and (except in the event therein mentioned of an Act not being obtained during the then next session to authorize the transfer to the said commissioners of the management of the said roads) would maintain the said roads at their own charge and expense: And whereas the said sums have been paid to the said commissioners, and it is expedient that the said agreement should be confirmed as hereinafter mentioned:

The said agreement shall be confirmed so far as the same relates to the repair and maintenance of the said roads; and the maintenance thereof shall be vested in the vestry of the said parish of Saint Pancras in like manner as if the said commissioners had been by Act of parliament liable to maintain and repair the said roads at the time of the commencement of this Act; and the sums paid to the said commissioners as aforesaid, or such part thereof as may not have been already applied for the purpose of putting the said roads into good and complete repair, shall be paid over to the vestry of the parish of Saint Pancras, and be applied for the general benefit of such parish in aid of any rates to be raised in such parish to defray expenses of paving, anything in this Act or in any Act relating to the said company to the contrary notwithstanding.

Special provision as to powers of commissioners acting under 5 & 6 Vict. c. 48, as to paving Ely Place, &c. (*a*).

237. This Act shall not divest the commissioners under an Act of the session holden in the fifth and sixth years of Her Majesty, chapter forty-eight (local), "For paving, lighting, watching, cleansing, and improving Ely Place and Ely Mews, Holborn, in the county of Middlesex," of any of the powers or property vested in them under that Act in relation to the paving, lighting, watering, and cleansing of streets apply to the parts within the limits of the said local Act, nor shall such parts be assessed or rated under this Act for defraying any expenses incurred by the district board for the Holborn district in relation to paving, lighting, watering, and cleansing; but such parts shall be subject to all the provisions of this Act relating to sewerage and house drainage, and to be assessed or rated for sewerage expenses incurred by the said district board, and for expenses incurred by the metropolitan board of works, and towards any sums required to be raised by such board under this Act, in like manner as other parts within the said district.

(*a*) Ely Place, which is part of the liberty of Saffron Hill, Hatton Garden, and Ely Rents, is by schedule (B.) included in the Holborn district. It is private property, and though open to the public during the day, has never been dedicated to the public, and the commissioners for paving Saffron Hill, Hatton Garden, and Ely Rents, were decided to have no authority under 5 Will. 4, c. 18, s. 44, to enter it for the purpose of paving it; *Paul* v. *James*, 1 G. & Dav. 316.

Section 238.

Special provisions as to parish of Woolwich (*b*).

238. Notwithstanding anything in this Act contained to the contrary, the provisions of this Act shall extend and apply to the parish of Woolwich only to the extent and in manner hereinafter mentioned; (that is to say,)

A member of the metropolitan board of works shall be from time to time elected by the local board of health of Woolwich, at a meeting of such board, as by this Act directed with respect to the vestry of each of the parishes mentioned in the said schedule (A.):

The said metropolitan board shall have and perform, within and in relation to the said parish, all the powers and duties vested in them under this Act, in like manner as within and in relation to other parishes mentioned in the said schedule (A.), save that the said local board shall be subject to all orders of the said metropolitan board in relation to sewerage and otherwise, and to all precepts requiring payment of money, in all respects as the vestries of other parishes in the said schedule (A.) are subject to the same, in lieu of the vestry of the said parish; and all sums required to be paid by such precepts shall be defrayed out of any moneys carried to the district fund account, or by means of a general district rate to be levied on the whole of the parish of Woolwich, or such part thereof as may be specified in the precept of the said metropolitan board.

Special provisions as to inclosed gardens in squares, &c. (*c*).

239. Where any enclosed garden or ornamental ground is vested in or under the maintenance or management of any commissioners or other body, for the use of the inhabitants of any square, crescent, circus, street, or place, surrounding or adjoining such garden or ground, and the powers of such commissioners or other body do not extend beyond such garden or ground, and such square, crescent, circus, street, or place, or any adjoining street, way, or passage, so far as the same may abut upon any part of any house, shop, building, or tenement situate in or fronting any such square, crescent, circus, street, or place, nothing in this Act shall divest such commissioners or body of any property in such garden or ground, or in any railing or footway bounding the same, or of any duties, powers, or authorities now or hereafter vested in any such commissioners or other body, for or in relation to the paving, watering, cleansing, improving, or regulating of such enclosed garden or ornamental ground, or in

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(*b*) The parish of Woolwich was constituted a district under the Public Health Act, 1848, (11 & 12 Vict. c. 63,) the provisional order having been confirmed by the 15 & 16 Vict. c. 69. The paving, local sewerage, &c., are administered by the local board of health; but the parish is by this provision made subject to the jurisdiction of the metropolitan board in relation to sewerage, metropolitan improvements, &c., in the same manner as the other parishes in schedule (A.), the local board being substituted for the vestry, for the purpose of compliance with their orders. The third section of the Local Government Act, 21 & 22 Vict. c. 98, declared that that Act should not be adopted by any place within the limits of the metropolis, as defined by the Metropolis Local Management Act; and by the Public Health Act, 1875, the metropolis is excepted from the 5th section dividing England into urban sanitary districts and rural sanitary districts. By sections 108 and 115 of the last-named Act certain powers are conferred upon the local authorities executing the Nuisances Removal Acts within the metropolis.

(*c*) See transfer of debt incurred by trustees of Grosvenor Square to vestry; *R.* v. *Vestry of St. George Hanover Square*, 32 L. J. Q. B. 160, referred to in note to section 180, *ante*.

Section 239. relation to the railing or footway bounding the same, or to levy rates for defraying any expenses incurred in the execution of such duties or powers; and where the maintenance or management of any enclosed garden or ornamental ground is vested in any commissioners or other body, for the use or benefit of the inhabitants of any square, crescent, circus, street, or place surrounding or adjoining the same, who are liable to be assessed for the maintenance thereof, and the powers of such commissioners or other body extend beyond such enclosed garden or ornamental ground, and such square, crescent, circus, street, or place, or such adjoining street, way, or passage as aforesaid, the maintenance and management of such enclosed garden or ornamental ground shall be vested in a committee, consisting of not more than nine nor fewer than three of such inhabitants, and such committee shall be appointed annually in the first week in June by such inhabitants; and the vestry or board shall from time to time cause to be raised the sums required by such committee for defraying the expenses of the maintenance and management of such enclosed garden or ornamental ground, or of such part thereof as is situate within their parish or district, by an addition to the general rate to be assessed on the occupiers of the houses or buildings the occupiers whereof are now liable to be assessed for the same purpose: Provided always, that where any such rate which may now be levied for such purpose is limited in amount the rate to be levied under this provision shall be subject to the like limit.

Saving of powers and property of commissioners under 14 & 15 Vict. c. 95 (*a*).

240. This Act shall not divest the commissioners from carrying into execution "The Crown Estate Paving Act, 1851," and the subsisting provisions of the Acts therein recited, or the commissioners of Her Majesty's works and public buildings, of any of the powers, duties, authorities, or property vested in them respectively under the said Acts; and nothing in this Act shall extend to authorize or empower any vestry or district board to exercise any power or control whatsoever in respect of paving, maintaining, lighting, watering, cleansing, and regulating any streets or places in the neighbourhood of the houses of parliament, delineated on a plan marked E., referred to by "The Crown Estate Paving Act, 1851," or any portion of the district now under the management of the commissioners for carrying into execution the said Crown Estate Paving Act, and the subsisting provisions aforesaid, or to exercise any power or control whatsoever in or over any of the gardens or pleasure grounds the management whereof is now or may for the time being be vested in such last-mentioned commissioners; nor shall any such street or place, or any portion of such district, as aforesaid, be assessed or

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(*a*) The powers vested in the commissioners under the 5 Geo. 4, c. 100, so far as concerned the making and maintenance of sewers, drains, and watercourses, and the making of sewers' rates for these purposes, were by the 11 & 12 Vict. c. 112, s. 143, transferred to the metropolitan commissioners of sewers. The Crown Estate Paving Act, 14 & 15 Vict. c. 95, mentioned in this section, transferred certain portions of the district included within the above Acts to the parishes, the control over the sewers being still reserved to the metropolitan commissioners. By section 25 the management of the places comprised in plan E. was vested in the commissioners of Her Majesty's works, &c. The places comprised in that plan were parts of New Palace Yard, St. Margaret Street, Old Palace Yard, and certain other adjoining streets and places. The jurisdiction of the former commissioners over certain parts of the crown estate near the Regent's Park, &c. was transferred to the commissioners under that Act.

Section 240.

rated under this Act for defraying any expenses incurred by any vestry or district board in relation to paving, lighting, watering, or cleansing, but such streets, places, and district shall be subject to all the provisions of this Act relating to sewerage and house drainage, and to be assessed or rated for sewerage expenses incurred by any such vestry or board, and for expenses incurred by the metropolitan board of works, and towards any sums required to be raised by such board under this Act as by this Act provided.

Saving of the rights of the commissioners of works.

241. Nothing in this Act shall divest the commissioners for the time being of Her Majesty's works and public buildings of any power or property now or which for the time being may be vested in them; and nothing in this Act shall extend to authorize or empower any vestry or district board to exercise any power or control whatsoever in or over any of the royal or public parks, gardens, or pleasure grounds, the management whereof is now or may be for the time being vested in such commissioners; and nothing in this Act shall abridge, alter, or affect any right, power, exemption, or remedy of the Queen's most excellent Majesty, her heirs or successors, or the said commissioners, in, over, or in relation to the possessions of the crown or of the public.

Saving of powers (*b*) of city commissioners of sewers over certain parts of parishes in schedule (B).

242. Nothing in this Act shall divest the commissioners of sewers of the city of London of any powers or property vested in them in relation to such parts of any of the parishes mentioned in schedule (B.) to this Act as are within the city of London, nor shall such parts be subject to be rated or assessed by any district board, but shall be subject to all the powers of the metropolitan board of works as other places in the city of London.

Saving rights of Metropolitan Sewage Manure Company, acting under 9 & 10 Vict. c. 398, and 10 & 11 Vict. c. 138.

243. Nothing in this Act shall extend to or affect any of the rights, privileges, powers, or authorities vested in the Metropolitan Sewage Manure Company by an Act of the session holden in the ninth and tenth years of Her Majesty, intituled "An Act to incorporate a Company by the Name of the Metropolitan Sewage Manure Company," or an Act of the session then next following, intituled "An Act for enabling the Metropolitan Sewage Manure Company to alter the Line of their Works, and for other Purposes:" (*c*) Provided always, that all rights, powers, and authorities by either of the said Acts vested in the commissioners of sewers for the time being for the city and liberty of Westminster and part of the county of Middlesex (*d*) shall

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(*b*) See note to section 1, *ante*, for definition of the word "city" in the City of London Sewers Act, 1848. The saving in the present section applies to parishes which are partly within and partly without the city of London, and it provides that nothing in the Act shall divest the commissioners of sewers of the city of the powers or property vested in them in relation to such parts of those parishes as are within the city, and that such parts shall not be subject to be rated or assessed by any district board, that is with respect to sewers and other matters reserved to the city of London; *Daw* v. *The Metropolitan Board of Works*, 31 L. J. C. P. 223.

(*c*) The Sewage Manure Company under the Acts referred to was established for the purpose of collecting the sewage of the King's Scholars' Pond and Ranelagh Sewers, and distributing the same for agricultural purposes. It is believed that the operations of this company were discontinued many years ago.

(*d*) The Acts imposed upon the company the obligation of giving notice to those commissioners before making any new sewers, and of conforming to their directions in their construction.

Section 243. be vested in the metropolitan board of works, and the provisions of the said Acts shall be construed as applying to such board in lieu of such commissioners, but any order or act which might have been made or done by the said commissioners at a court of sewers may be made or done by the said metropolitan board at any meeting of such board.

Saving rights of commissioners or trustees of turnpike roads.

244. Nothing in this Act shall divest the commissioners or trustees of any turnpike road of any powers or property vested in them as such commissioners or trustees, save as herein expressly provided (*a*) with respect to turnpike roads, and save that the footpaths of any such road shall be under the care and management of the vestries and district boards of the parishes or districts in which the same are situate in like manner as other footpaths in such parishes and districts: Provided always, that the provisions of this Act transferring to vestries and district boards powers and property vested in any commissioner or other body in relation to the paving, lighting, watering, cleansing, and improving of their parishes and districts, and all other provisions of this Act incident to or consequent upon such transfer shall apply to all powers and property vested in the trustees of the Commercial-road, so far as regards any streets or highways other than such road, and also so far as regards the footpaths of such road.

Saving for metropolitan police commissioners.

245. Nothing in this Act shall interfere with the powers given by law to the commissioners of the police of the metropolis.

Not to prejudice dispute between Battersea and Penge.

246. Nothing in this Act shall be construed to prejudice or affect any question as to whether the hamlet of Penge is or is not a part of the parish of Battersea.

Repeal of Acts inconsistent with this Act.

247. All Acts of parliament in force in any parish or place to which this Act extends, or in any part of such parish or place, shall, so far as the same are inconsistent with the provisions of this Act, be repealed (*b*) as regards such parish or place, or such part thereof, notwithstanding any provisions of this Act continuing and transferring respectively to vestries of parishes and transferring to district boards any duties, powers, or authorities now vested in vestries, commissioners, or other bodies.

In case of conflict with the provisions of this Act, provisions of local Acts may be

248. Upon the petition of the metropolitan board of works, or of any district board or vestry, representing to Her Majesty in council that by reason of the provisions of any local Act of parliament relating to any district or parish, or any part thereof respectively, difficulties have arisen in the execution of this Act and of such local Act or either of them, and praying for a suspension or alteration of all or any of the provisions of such local Act, or for the establishment of

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(*a*) See section 157, *ante* (now repealed), and section 33 of 25 & 26 Vict. c. 33, *post*, for regulations as to breaking up turnpike roads.

(*b*) This does not apply to powers contained in a railway Act, per Vice-Chancellor *Wood*; *London and Blackwall Railway Company* v. *Board of Works for the Limehouse District*, 20 J. P. 789. A subsequent local statute was held not to repeal by implication a general Act with respect to the construction of chimneys; *Hill* v. *Hall*, L. R. 1 Ex. D. (C. A.) 411. See also *Improvement Commissioners of Walton* v. *Walford*, 44 L. J. Q. B. 74; *R.* v. *London and North Western Railway Company*, 46 L. J. M. C. 102; *Garnett* v. *Bradley*, *Ibid.*, Ex. 545.

Section 248. varied by order in council on petition of boards or vestries.

other provisions in lieu thereof under this enactment, it shall be lawful for Her Majesty, by order in council, to suspend or alter all or any of the provisions of such local Act, and to make other provisions in relation to the matters thereof as Her Majesty, with the advice of her privy council, may think necessary under the circumstances of the case; and every such order in council shall be laid before both houses of parliament within one month after the making thereof, if parliament be then sitting, or, if parliament be not sitting, then within one month after the next meeting of parliament, and shall be published in the London Gazette: Provided always, that no such order in council shall remain in force beyond the term of one year from the making thereof.

Power to extend Act to adjoining Parishes.

Act may be extended by order in council to parishes adjoining the metropolis not having less than 750 ratepayers.

249. In case and when and so often as it is made to appear to Her Majesty in council, upon the representation of the metropolitan board of works (*c*) that the provisions of this Act should be extended to any parish adjoining the metropolis, and in which there are not less than seven hundred and fifty inhabitants rated to the relief of the poor, it shall be lawful for Her Majesty, with the advice of her privy council, to order that the provisions of this Act shall extend to such parish, from and after a day to be mentioned in this behalf in the order in council, and that such parish shall join with any parish or parishes or district in such order named in the election from time to time of the member or members of the metropolitan board of works by this Act directed to be elected for such parish or parishes or district, and to make such provision as to the mode in which every such joint election shall take place, and otherwise in relation thereto, as to Her Majesty in council may seem necessary and proper; and every such order shall be published in the London Gazette; and from and after the time mentioned in such order for the extension of the provisions of this Act to any parish as aforesaid the provisions of this Act shall extend to and be in force therein, in like manner, so far as circumstances will admit, as such provisions apply to any parish mentioned in schedule (A.) of this Act, subject, nevertheless, to the provisions in such order contained in relation to the election by such parish jointly as aforesaid of a member or members of the said metropolitan board: Provided always, that notice of every such representation, and of the time when it shall please Her Majesty to order that the same be taken into consideration by her privy council, shall be published in the London Gazette one month at least before such representation is so considered.

Interpretation and Commencement of Act.

Interpretation of terms: (*d*) "the metropolis:"

250. In the construction of this Act "the metropolis" shall be deemed to include the city of London, and the parishes and places mentioned in the schedules (A.), (B.), and (C.) to this Act; "the city

(*c*) See provision in 25 & 26 Vict. c. 102, s. 42, *post*, requiring, before any representation is made under this enactment, two months' previous notice to the churchwardens and surveyors of highways of the parish to which the representation relates.

(*d*) See interpretation of terms in section 112 of amending Act, 25 & 26 Vict. c. 102, *post*.

Section 250. of London" shall be deemed to include all parts now within the jurisdiction of the commissioners of sewers for the city of London; and the word "parish" shall include any place mentioned in schedule (A.) to this Act, and any place or combination of places mentioned in schedule (B.) to this Act, for which one or more member or members is or are to be elected to any district board; the expression "the overseers of the poor (*a*) shall include any persons authorized to make and collect or cause to be collected the rate for the relief of the poor in any parish; any expression referring to any rate or rates raised under this Act by the metropolitan board of works or any vestry or district board shall mean the sums and rates authorized to be raised by the said metropolitan board and the sums authorized to be raised by any vestry and district board respectively; the word "owner" (*b*) shall, except for the purpose of the provision of this Act requiring notice to be served on owners or reputed owners of land, before application to one of Her Majesty's principal secretaries of state for his consent to exercise powers of taking land, or any right or easement in or over land, compulsorily, mean the person for the time being receiving the rackrent of the lands or premises in connexion with which the said word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent; the word "street" shall apply to and include any highway (except the carriageway of any turnpike road) and any road, bridge (not being a county bridge), lane, footway, square, court, alley, passage, whether a throughfare or not, and a part of any such highway, road, bridge, lane, footway, square, court, alley, or passage; the word "drain" shall mean and include any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed, and shall also include any drain for draining any group or block of houses by a combined operation under the order of any vestry or district board (*d*); and the word "sewer" (*e*) shall mean and include sewers and drains of every description, except drains to which the word "drain," interpreted as aforesaid, applies; and the word "ashpit" shall include "dustbin."

"the city of London:"

"Parish:"

"Overseers the poor:"

"Rates:"

"Owner:"

"Street:" (*c*)

"Drain:"

"Sewer:"

"Ashpit."

(*a*) In *Christie* v. *The Guardians of the Poor of St. Luke, Chelsea*, 27 L. J. M. C. 153, it was held to be no objection to a rate made by the guardians of the poor of the parish of St. Luke, Chelsea, pursuant to an order of the vestry, that the order was addressed to the *overseers* instead of to the *guardians*.

(*b*) The service of a notice under the 69th section of the Public Health Act, 1848, on a person *de facto* receiving the rent, was held a service on the "owner" within a similar definition; *Peck* v. *Waterloo, &c., Local Board of Health*, 33 L. J. M. C. 11, and as to under the same enactment where the name of the owner or occupier was unknown; *Mason* v. *Bibby*, *Ibid.* 105.

(*c*) See *Le Nève* v. *The Vestry of Mile-End Old Town*, 27 L. J. Q. B. 208, note to section 119, *ante*.

(*d*) Or pursuant to the order, or direction, or with the sanction or approval of the metropolitan commissioners of sewers; section 112 of 25 & 26 Vict. c. 102, *post*.

(*e*) See *Sutton* v. *Mayor of Norwich*, 27 L. J. Ch. 739, where it was held that the power to construct sewers does not authorize a local board to enter upon a man's land, against his wish, to construct a reservoir.

251. This Act shall commence and come into operation, save as herein otherwise provided, on the 1st day of January, 1856. Section 251. Commencement of Act.

SCHEDULE (A.)

Part I.

Parishes each electing Two Members of the Metropolitan Board of Works.

Saint Marylebone.
Saint Pancras.
Lambeth.
Saint George, Hanover Square.
Islington, Saint Mary.
Shoreditch, Saint Leonard.

Part II.

Parishes each electing One Member of the Metropolitan Board of Works.

Paddington.
Saint Matthew, Bethnal Green.
Saint Mary, Newington, Surrey.
Camberwell.
Saint James, Westminster.
Saint James and Saint John, Clerkenwell, to be considered as one parish.
Chelsea.
Kensington, Saint Mary Abbot.
Saint Luke, Middlesex.
Saint George the Martyr, Southwark.
Bermondsey.
Saint George in the East.
Saint Martin in the Fields.
Hamlet of Mile End Old Town.
Woolwich.
Rotherhithe.
Saint John, Hampstead.

SCHEDULE (B.)

PARISHES UNITED INTO DISTRICTS FOR THE PURPOSES OF THE ACT.

PART I.

Districts each electing One Member of the Metropolitan Board of Works.

Name of District.	Parishes.	Number of Members to be elected to District Board.
Whitechapel District-	Saint Mary, Whitechapel -	27
	Christchurch, Spitalfields -	12
	Saint Botolph, Without Aldgate, in the county of Middlesex - - -	6
	Holy Trinity, Minories -	1
	Saint Katherine, Precinct of- - - - -	1
	Mile End New Town, Hamlet of - - -	6
	Liberty of Norton Folgate	3
	Old Artillery Ground -	1
	Tower, District of (*a*) -	1
	TOTAL - -	58
Westminster District	Saint Margaret - -	30
	Saint John the Evangelist	27
	TOTAL - -	57
Greenwich District -	Saint Paul, Deptford, including Hatcham - -	21
	Saint Nicholas, Deptford -	6
	Greenwich - - -	30
	TOTAL - -	57
Wandsworth District	Clapham - - -	18
	Tooting Graveney - -	3
	Streatham - - -	9
	Saint Mary, Battersea, excluding Penge - -	12

(*a*) See as to transfer of powers, &c., for paving Tower Hill, transferred to Whitechapel district under section 90 of this Act; *R.* v. *Trustees of Tower Hill*, cited in note to section 90, *ante*.

Name of District.	Parishes.	Number of Members to be elected to District Board.
Wandsworth District —*continued.*		
	Wandsworth - - -	9
	Putney, including Roehampton - - -	6
	TOTAL - -	57
Hackney District -	Hackney - - - -	51
	Saint Mary, Stoke Newington - - - -	6
	TOTAL - -	57
Saint Giles District -	Saint Giles in the Fields -	27
	Saint George, Bloomsbury	21
	TOTAL - -	48
Holborn District - -	Saint Andrew, Holborn above Bars - - -	24
	Saint George the Martyr -	9
	Saint Sepulchre, in the county of Middlesex -	6
	Saffron Hill, Hatton Garden, Ely Rents, and Ely Place - - -	9
	The Liberty of Glass-house Yard - - - -	1
	TOTAL - -	49
Strand District - -	Saint Anne, Soho - -	18
	St. Paul, Covent Garden -	9
	Saint John the Baptist - Savoy, or Precinct of the Savoy - - -	1
	Saint Mary-le-Strand -	3
	St. Clement Danes - -	15
	Liberty of the Rolls -	3
	TOTAL - - -	49
Fulham District - -	Saint Peter and Saint Paul, Hammersmith -	24
	Fulham - - - -	15
	TOTAL - -	39
Limehouse District -	Saint Anne, Limehouse -	15
	Saint John, Wapping -	3
	Saint Paul, Shadwell -	6
	Ratcliff, Hamlet of - -	12
	TOTAL - -	36

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Name of District.	Parishes.	Number of Members to be elected to District Board.
Poplar District - -	All Saints, Poplar - -	24
	Saint Mary, Stratford-le-Bow - - - -	9
	Saint Leonard, Bromley -	15
	TOTAL - -	48
Saint Saviour's District - - - - -	Christ Church - -	15
	Saint Saviour (including the Liberty of the Clink) - - -	24
	TOTAL - -	39

PART II.

Districts united for electing one Member of the Metropolitan Board of Works.

Name of District.	Parishes.	Number of Members to be elected to District Board.
Plumstead District	Charlton next Woolwich -	9
	Plumstead - - -	12
	Eltham - - - -	6
	Lee - - - -	9
united with	Kidbrooke - - -	1
	TOTAL - -	37
Lewisham District	Lewisham, including Sydenham Chapelry -	24
	Hamlet of Penge - -	3
	TOTAL - -	27

PART III.

Parish and District united for electing one Member of the Metropolitan Board of Works.

The Parish of Rotherhithe - -		
united with		
Saint Olave District	Saint Olave - - -	12
	Saint Thomas, Southwark	1
	Saint John, Horsleydown -	15
	TOTAL - - -	28

SCHEDULE (C.)

The Close of the Collegiate Church of Saint Peter.
The Charter House.
Inner Temple.
Middle Tempie.
Lincoln's Inn.
Gray's Inn.
Staple Inn.
Furnival's Inn.

SCHEDULE (D.)

Main Sewers of the Metropolis.

North Side of the Thames.

Stamford Brook (*West Branch*).

Commences at an angle in the boundary between the parishes of Hammersmith and Acton, on the south of the Uxbridge and London Road, and tangent to a footpath running south from East Acton Lane, extending thence in a south-easterly direction to Paddenswick Green, when it joins the east arm of the said brook.

Stamford Brook (*East Branch*).

Commences at a point on the boundary between the parishes of Hammersmith, Willesden, and Acton, about 100 feet north-east of the Old Oak Bridge over the North-Western Railway, extending thence in a southerly direction to Paddenswick Green.

The united streams of the above two branches discharge into Hammersmith Creek.

Brook Green Sewer.

Commences in Wood Lane, at the keeper's lodge, on the south side of Wormwood Scrubs, and discharges into the river Thames by two outlets, viz., Bridge Road and Queen Street, on the east side of Hammersmith Suspension Bridge.

A branch from the above commences in New Road, at the north end of the Grove, and joins the main sewer at Broadway, Hammersmith.

Fulham Sewer.

Commences at a sluice in the moat surrounding the Bishop of London's Palace, on the west side of the junction of High Street. Fulham, with the Fulham Road, and discharges into the Thames under the toll-house of Fulham Bridge.

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Eel Brook Sewer.

Commences at a point in North End Road, about 80 feet north-west of Walham Green Church, and discharges into Kensington Canal on the south-east side of the Imperial Gasworks.

Counter's Creek Sewer (Main Line).

Commences at a point in the Harrow Road, about 200 feet west of Kensal Green Cemetery Gate, and discharges into the Thames at the outlet now forming on the south-west side of Cremorne Gardens.

Counter's Creek Sewer (West Branch).

Commences at a culvert under the Grand Junction Canal, on the boundary between the parishes of Kensington and Hammersmith, at the south-west corner of Kensal Green Cemetery, and joins the above main line at Latimer Road at its junction with the Bromley Road.

Counter's Creek Sewer (East Branch).

Drains the whole of Kensal New Town, situate in a detached portion of the parish of St. Luke, Chelsea, and part of the parish of St. Mary, Paddington, and passes under the Great Western Railway at a bridge leading to Portobello Lane, on the south-east side of the Western Gasworks, and joins the main sewer at a point about a quarter of a mile north-west of Notting Barn Farm.

Counter's Creek Sewer (Kensington Branch).

Commences in Victoria Grove at about 50 feet to the north of Uxbridge Road, and joins the main line at the junction of Pembroke and Warwick Roads.

Sewer to the Metropolitan Sewage Manure Works.

Commences at Knightsbridge at its junction with the Ranelagh Sewer, and extends thence in a south-westerly direction to the works at Stanley Bridge.

Millman's Row Sewer.

Commences in Fulham Road, at about 780 feet west, and at about 230 feet east of the junction of Park Walk with Fulham Road, and discharges into the river Thames opposite to Millman's Row.

Church Street Sewer.

Commences in Gloucester Road at its junction with Canning Place, at about 750 feet south of Hogmore Lane Gate, and discharges into the Thames on the south side of Chelsea Old Church.

Queen Street Sewer.

Commences between Gloucester Road and Hyde Park Gate south, on the south of Kensington Road, and about 300 feet south of Kensington Gate, runs through Old Brompton, and discharges into the river Thames on the east side of Chelsea Free Dock.

Smith Street Sewer.

Commences in the Kensington Road at a point about 750 feet west of Prince of Wales Gate, and, extends thence by Rutland Gate, Rutland Street, and Fulham Road, on the West of Brompton Crescent, and along College and Markham Streets, and discharges into the Thames on the west side of Chelsea Royal Hospital.

Ranelagh Sewer.

The branch sewers from Edgware Road, Finchley Road, and Kilburn Vale unite at Kilburn Bridge, and form the main line, which, running in a southerly direction, discharges into the river Thames on the south-east side of Chelsea Royal Hospital.

This sewer has several branches, the chief of which commences in Grove End Road, at about 900 feet west of St. John's Wood Road, extending thence by Lisson Grove, New Road, Grand Junction Road, and Albion Street, to a tumbling bay, where it joins the main sewer in Uxbridge Road.

King's Scholars' Pond Sewer.

Commences in the Finchley Road, at about 1,500 feet above Junction Road toll gate, and discharges into the river Thames at the Equitable Gasworks, about 700 feet above Vauxhall Bridge.

King's Scholars' Pond Sewer (Pall Mall Branch).

Commences at Waterloo Place, and joins the main line opposite the entrance of Buckingham Palace.

Grosvenor Ditch.

Commences in Page Street, about 150 feet east of the junction with Regent Street, Vauxhall Bridge Road, and discharges into the river Thames at the northern extremity of Millbank Road.

Horseferry Road Sewer.

Commences in Grey-coat Place, and discharges into the river Thames at the Horseferry Stairs.

Wood Street Sewer.

Commences in Grey-coat Place, and discharges into the river Thames in the prolongation of Wood Street.

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Victoria Street Sewer.

Commences at Shaftesbury Terrace, Pimlico, and discharges into the Thames at Percy Wharf.

Regent Street Sewer (Western Branch).

Commences in the outer circle of the Regent's Park, at about 200 feet north-west of Hanover Gate entrance, and joins the eastern branch in the New Road, opposite to the prolongation of Portland Place.

Regent Street Sewer (Eastern Branch).

Commences in Upper Albany Street, about 200 feet south of Collateral Cut Bridge over the Regent's Canal, and joins the western branch at the aforesaid point in the New Road.

The main sewer proceeds thence along Regent Street, and discharges into the river Thames at Percy Wharf.

Northumberland Street Sewer (Western Branch).

Commences in Warren Street, on the north of Fitzroy Square, and proceeds in a southerly direction along Cleveland, Newman, Wardour, Princes, and Panton Streets, Haymarket, to Charing Cross, opposite the district post office.

Northumberland Street Sewer (Eastern Branch).

Commences in New Road, at about 170 feet west of the junction with Hampstead Road, and proceeds along Tottenham Court Road, High Street, Seven Dials, and St. Martin's Lane, to Charing Cross, when it joins the western branch.

The main line proceeds along Northumberland Street, and discharges into the Thames at Northumberland Wharf.

Savoy Street Sewer.

Commences in Stanhope Street, Regent's Park Basin, at a point at about 160 feet north of the junction with Edward Street, and proceeds along Robert, George, Gower, Charlotte, Bloomsbury, Endell, Bow, Wellington, and Savoy Streets, and discharges into the Thames at a point about 100 feet above Waterloo Bridge.

Norfolk Street Sewer.

Commences at the junction of Drury Lane and Long Acre, and passes by the Olympic Theatre, and along Newcastle Street and Strand, and discharges into the river Thames opposite Norfolk Street.

Essex Street Sewer (Western Branch).

Commences in Russell Square, opposite Montague Place, and proceeds along Montague, Russell, and Museum Streets, Drury Lane, Great Wild Street, and Vere Street, to the junction of the eastern branch at the intersection of Sheffield and Gilbert Streets, Clare Market.

Essex Street Sewer (Eastern Branch).

Commences at the corner of Tottenham Court Road, and proceeds along New Oxford Street, Newton Street, and Cross Lane, Parker and Great Queen Streets, west side of Lincoln's Inn Fields, to the junction with the western arm above described.

The main sewer proceeds thence along Gilbert Street, Clement's Lane, Pickett Street, and Essex Street, and discharges into the river Thames at Temple Pier.

Fleet Sewer.

Commences in High Street, Hampstead, at the junction of High Street with Flask Walk, extending thence through South End Green, Gordon House Lane, Victoria Road, Great College Street, Old St. Pancras Road, Bagnigge Wells Road, west of Middlesex House of Correction, and by Farringdon Street to Blackfriars Bridge, where it discharges into the river Thames.

This sewer has numerous tributaries running into other districts, the chief of which are Camden Road, Caledonian Road, Pentonville Hill, River Street, St. John's Road, Holborn Hill, and Guildford Street.

Goswell Street Sewer.

Commences in Sydney Street, at the junction of Sydney Grove, and discharges into the Thames at Walbrook.

London Bridge Sewer (City Road Branch).

Commences at Duncan Terrace, on the west side of the New River, and joins the main line at the north end of Finsbury Pavement.

Another branch commences in Lonsdale Square, Islington, and extending thence through Barnsbury Street, Richmond Grove, passes under the New River at New North Road Bridge, thence along Portland Place, King Street, under the Regent's Canal, by Sturt's Lock, Walbrook Street, and Critchill Place, where it joins another branch at St. John's Church, Hoxton.

London Bridge Sewer (Balls Pond Branch).

Commences on the boundary between St. Mary, Islington, and St. John, Hackney, at Cock and Castle Lane, Dalston, and passes by Ball's Pond and Rosemary Branch Bridge to the junction at St. John's Church, above described. The united sewers then discharge into the river Thames at London Bridge.

London Bridge Sewer (Shoreditch Branch.)

Commences in Queen's Road, at the junction with Laurel Street, Dalston, and extending thence along Queen's Road, Great Cambridge Street, Hackney Road, Shoreditch, and Bishopsgate, joins the main line at King William's statue.

Irongate Sewer.

Commences in the City, and proceeds along the south-west side of Houndsditch, west side of Minories, and by the precincts of Old Tower Without, and discharges into the river Thames at Irongate Stairs, on the east of the Tower.

Nightingale Lane Sewer.

Commences in Union Street, Old Artillery Ground, and Booth Street, Spitalfields, and extends thence along Commercial, Leonard, Wells, and Parson Streets, and Nightingale Lane, and discharges into the Thames on the western side of the entrance into Hermitage Basin.

Hermitage Street Sewer.

Commences in Redmead Lane, on the boundary between the parishes of St. John, Wapping, and St. George-in-the-East, and extends thence along Great Hermitage Street, and discharges into the river Thames at about 50 feet east of Union Stairs.

Old Gravel Lane Sewer.

Commences at the boundary between the parishes of St. George-in-the-East and St. John, Wapping, in Old Gravel Lane, and discharges into the river Thames at a point about 110 feet west of the Thames Tunnel.

Wapping Wall Sewer.

Commences in Green Bank, at the junction of Upper Well Alley, and passes through King Street, and discharges into the river Thames at about 120 feet on the north-east side of New Crane Dock.

Shadwell Basin Sewer.

Commences on the north side of the Eastern Dock, at the termination of West Gardens, and extends thence between the warehouses and New Gravel Lane, on the north side of Shadwell Basin, and along Shadwell Dock Street, and discharges into the river Thames at the eastern pier of the Shadwell entrance to the London Docks.

Pennington Street Sewer.

Commences at the boundary between the parishes of St. George-in-the-East and St. John, Wapping, in St. George Street, and extends thence along Pennington Street, Old Gravel Lane, West Gardens, Cow Lane, Little Spring Street, Labour-in-Vain Street, and Lower Shadwell, and discharges into the river Thames at Shadwell Dock Stairs.

Ratcliffe Highway Sewer (Western Branch).

Commences at the junction of Sherwood Place with Meed Street, at about 900 feet south-east of Shoreditch Church, and extends along Turvile, Thomas, and High Streets, and Whitechapel Road, to the junction of New Road with Whitechapel Road.

Ratcliffe Highway Sewer (Eastern Branch).

Commences at the junction of Hague Street with Bethnal Green Road, and extends along Hague Street, Wellington, and Charles Streets, to the junction of New Road with Whitechapel Road, above described.

Ratcliffe Highway Sewer (North-Eastern Branch).

Commences from the rear of Shoreditch Church, and proceeds along Old Castle Street, Virginia Row, Wellington Row, Old Bethnal Green Road, Cambridge Road, Cleveland Street, King Street, Jamaica Street, Havering Street, and Love Lane, to Ratcliffe Highway.

The main sewer proceeds along New Road, Cannon Street Road, St. George's Street, High Street, Shadwell, and Broad Street, and discharges into the river Thames at Ratcliff Cross Stairs.

Limekiln Dock Sewer.

Commences at the junction of Victoria Road with Bishop's Road, on the south-western side of Bonner's Hall Bridge, leading into Victoria Park, and extends along Victoria Road, east side of Bethnal Green, Globe Road, White Horse Lane, and Rhodeswell Road, and passes under the Regent's Canal at Rhodeswell Wharf, thence along the Black Ditch, Upper North Street, and North Street, and discharges into the river Thames at Limekiln Dock.

Great Sluice and Drunken Dock Sluice.

These sluices are situated on the eastern side of the Isle of Dogs, and drain the whole of that part of the isle south of the West India Dock Basin. They have four inlet sluices for purposes of flushing.

Blackwall Sluice.

Commences at Batson's Inlet, near Limehouse entrance to the West India Dock, and discharges into the Thames on the north side of the Blackwall entrance to the West India Dock.

Eastern Counties Railway Sewer.

Commences at Mile End Bridge, over the Regent's Canal in Bow Road, proceeds along Bow Road, Tredegar Square, and by the railway, and discharges into the river Lea, where the viaduct of the said railway crosses that river.

Hackney Brook Sewer (Main Line).

Commences in the High Road opposite to St. John's Church, Upper Holloway, and extends thence in a south-east direction along Holloway Road to a point about 450 feet south of Tollington Road, thence in an easterly direction by the north of Abney Park Cemetery, Hackney Downs, and Hackney Wick, and discharges into the river Lea, immediately to the north of Old Ford Wharf.

Hackney Brook Sewer (Wick Lane Branch).

Commences in Old Ford Road, on the east side of Old Ford Bridge, crossing the Regent's Canal, and extends along Grove Road, Wick Lane, and joins the main sewer at Hackney Wick.

SOUTH SIDE OF THE THAMES.

Beverley Brook.

Commences on the boundary between the parishes of Putney and Wimbledon, at a point about 1,800 feet south of Beverley Bridge, on the Kingston Road, and discharges into the river Thames about half a mile above Putney Town.

Sewer between Parishes of Putney and Wandsworth.

Commences on the road from Kingston to Wandsworth, and discharges into the river Thames at a point about 1,500 feet below Fulham Bridge.

Wandle River.

Commences at a point where the parishes of Streatham and Tooting intersect the river, and discharges into the river Thames at the town of Wandsworth.

Falcon Brook.

Commences at Tooting Common, and discharges into the river Thames at Battersea Creek.

Lord Spencer's Sewer.

Commences in the town of Battersea, and extends in an easterly direction through Battersea Park, and discharges into the river Thames at about 400 feet below Battersea New Bridge.

Heath Wall Sewer (Main Line).

Commences at the Falcon Brook at a sluice about 300 feet north of the South-Western Railway, and extending along the south margin of Battersea Fields, discharges into the Thames at Heath Wall Mill.

Heath Wall Sewer (Clapham Rise Branch).

Commences on the boundary between the parishes of Clapham and Lambeth at the intersection of New Road with Clapham Rise, and extends along the east side of Clifton Street, and joins the main sewer at a point about 100 feet north-east of New Road, Battersea Fields.

Effra Sewer.

Commences at the boundary between the parishes of St. Mary, Lambeth, and Croydon, in Westow Hill Road, immediately opposite to the convent of "Our Lady," and discharges into the river Thames at Vauxhall Creek, on the south side of the Phœnix Gasworks, and near to Vauxhall Bridge.

Effra Sewer (Upper Norwood Branch).

Commences in Westow Hill Road on the boundary between the parishes of Lambeth and Croydon, at about 200 feet west of the Crystal Palace Hotel, and proceeds northward along the boundary between the parishes of St. Mary, Lambeth, and St. Giles, Camberwell, and joins the main sewer at a point about 230 feet west of Croxted Lane.

Duffield and Battle Bridge Sewers.

These sewers drain the most densely inhabited portions of the south side. The inlets for flushing purposes are at Kennington,

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Vauxhall, Lambeth Church, and Stangate. The outlets are by the following sluices, viz., the Arnold and Dover Sluices, near Waterloo Bridge; Pudding Mill, near Blackfriars Bridge; the Boar's Head, Welsh Troopers, Black Lion, and Bear Sluices, near Southwark Bridge; the Bridge Yard, Battle Bridge; and Green Bank, in St. Olave, Southwark; Freeman's Lane, St. John Jerusalem; and Great St. John, in Horsleydown; and the Salisbury and Duffield Sluices, in Bermondsey.

Limekiln Sluice.

Drains the open fields of parts of the parish of Rotherhithe, and proceeds along Swan Lane, and discharges into the river Thames at about 300 feet east of the Thames Tunnel.

Globe Stairs Sewer.

Drains the Northern Basin of the Commercial Dock Company, and extends along the eastern side of St. Paul's Church, Rotherhithe, and part of Rotherhithe Street, and discharges into the river Thames at Globe Stairs.

Sewer at Durand's Wharf (Rotherhithe).

Commences to the south-east of Bull-Head Dock, Rotherhithe, and pursues an easterly course by Rotherhithe and Lower Queen Street, and discharges into the river Thames at a "10 footway," opposite to Cow Lane.

Rotherhithe Pier Sewer.

Commences in Trinity Street, at a point about 400 feet south of Cow Lane, and proceeds along Trinity Street, and discharges into the river Thames at Rotherhithe Boat Pier.

Earl Sewer (Main Line).

Commences in Cold Harbour Lane, at a point about 1,100 feet north-east of its junction with Loughborough Road, and proceeds along High Street, Camberwell, Camberwell Road, Boundary Lane, and eastward along the boundaries of several parishes, and discharges into the river Thames on the boundary between the counties of Surrey and Kent, near to the Royal Dock Yard, Deptford.

Earl Sewer (Wyndham Road Branch).

Commences on the east side of Kennington Park, and proceeds along New Row, and southward on the east of Thomas Street, eastward along Wyndham Road, and joins the main sewer at a point about 100 feet south of Southampton Street, Camberwell.

Earl Sewer (White Post Lane Branch).

Commences in Victoria Road, at the junction with Choumert Place and Cutthroat Lane, near Peckham Rye, and proceeds along Victoria Road, Hanover Street, Rye Lane, High Street, Meeting House Lane, Halfway House Lane, and White Post Lane, and joins the main sewer at the junction of the parishes of Rotherhithe, St. Paul's, Deptford, and St. Giles, Camberwell.

Royal Dock Yard Sewer.

Commences on the east of Black Horse Bridge, and extends eastward on the south side of the Mast Pond, and discharges into the river Thames opposite to the Royal Victualling Yard.

Ravensbourne and Sydenham Sewer.

Commences at Bell Green, and extends along and by Catsford Hill Road, Lewisham, and Bromley Road, Silver Street, Loam Pit Vale, and Mill Lane, and discharges into Deptford Creek at Parish Wharf, near Kingsford Mill.

Ravensbourne and Lee Green Sewer.

Commences in the Eltham Road, about 300 feet east of Lee Green, and proceeds along Lee Road, Lewisham Road, Bath Place, Egerton Road, and North Pole Lane, to a pumping station, where it discharges into Deptford Creek, at a point about 400 feet north of the London and Greenwich Railway.

Horseferry Road (Greenwich).

Commences in Caroline Street and Roan Street, and proceeds along Union and Bridge Streets, and discharges into the river Thames at Horseferry.

SCHEDULE (E.)

Form of Mortgage of Rates.

Mortgage, Number ( ).

By virtue of an Act passed in the year of the reign of Queen Victoria, intituled [*here insert the title of this Act*], the metropolitan board of works, *or* the board of works for the district of , *or* the vestry of the parish of (*as the case may be*), in consideration of the sum of paid to by *A. B.*, of , for the purposes of the said Act, do grant and assign unto the said *A. B.*, his executors administrators, and assigns, all [*here describe the moneys or rates to be mortgaged*], to hold to the said *A. B.*, his executors, administrators, and assigns, from the day of the date hereof until the

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said sum of , with interest at the rate of per centum per annum for the same, shall be fully paid and satisfied; and it is hereby declared that the said principal sum shall be repaid on the day of , and that in the meantime the interest thereof shall be paid on the day of and the day of in every year.

In witness whereof the metropolitan board of works, *or* the said district board, *or* the said vestry (*as the case may be*), have hereunto set their seal, this day of , one thousand eight hundred and .

SCHEDULE (F.)

Form of Transfer of Mortgage.

I, *A. B.* of in consideration of the sum of pounds paid to me by *C. D.* of , do hereby transfer to the said *C. D.*, his executors, administrators, and assigns, a certain mortgage, number , bearing date the day of , and made by the metropolitan board of works, *or* the board of works for the district of , *or* the vestry of the parish of , for securing the sum of and interest [*or, if such transfer be by indorsement on the mortgage, insert, instead of the words after "assigns,"* the within security], and all my property, right, and interest in and to the money thereby secured, and in and to the moneys thereby assigned.

In witness whereof I have hereunto set my hand and seal, this day of , one thousand eight hundred and .

A. B. (L. S.)

AN ACT

TO AMEND THE ACT OF THE LAST SESSION OF PARLIAMENT, CHAPTER ONE HUNDRED AND TWENTY, FOR THE BETTER LOCAL MANAGEMENT OF THE METROPOLIS.

19 & 20 VICT. CAP. 112.

29TH JULY, 1856.

Section 1.

18 & 19 Vict. c. 120.

WHEREAS it is expedient to amend the Act of the last session of parliament, chapter one hundred and twenty, "for the better Local Management of the Metropolis," as hereinafter mentioned: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same as follows:

Church rates where made in open vestry before passing

1. Where at the time of the passing of the said Act the power of making church rates or rates of the nature of church rates (*a*) in any parish was vested in any open vestry, or in any meeting in the nature of an open vestry meeting, or in any meeting of the parishioners,

(*a*) The Compulsory Church Rates Abolition Act, 1868, 31 & 32 Vict. c. 109, enacts, section 1, that after its passing, no suit shall be instituted or proceedings taken in any ecclesiastical or other court, or before any justice or magistrate to enforce or compel the payment of any church rate made in any parish or place in England or Wales.

Section 3 enables church rates to be levied in any parish for paying off any sum of money due on the security of Church rates, or of rates in the nature of church rates.

Certain enactments and proceedings are excepted from the operation of the Act, which contains provisions relative to rates applicable partly to ecclesiastical purposes and partly to other purposes, and with respect to other matters.

Where money was advanced under 5 Geo. 4 c. 36 by commissioners of public works on the security of certain rates, the commissioners were held not to be deprived of their security, even if, as alleged, the money had been improperly expended; *Rippin* v. *Bastin*, 2 L. R. Ecc. Cas. 386.

Where by 5 Geo. 4, c. 36 churchwardens were empowered to borrow money of the public works loan commissioners to be repaid by instalments within twenty years at the furthest, it was held, reversing the judgment of the Queen's Bench, that the statute expressly and impliedly forbade the making of a rate after twenty years; *R.* v. *Churchwardens of All Saints, Wigan*, 41 J. P. 132.

Section 1. of the Act 18 & 19 Vict. c. 120, to continue to be so made.

inhabitants, or ratepayers generally, or of such of the parishioners, inhabitants, or ratepayers as were rated at or above any specified amount or value (whether such vestry or meeting were holden for the parish at large or for any liberty or other district therein), such power shall not be deemed to have become vested in the vestry constituted in such parish under the said Act, but shall be exercised as if the said Act has not been passed: Provided (*a*) always, that this Act shall not affect any such rate made before the passing thereof by any such vestry as last aforesaid.

Nothing in this Act or in 18 & 19 Vict. c. 120, to affect ecclesiastical districts (*b*).

2. Nothing in the said Act or this Act shall affect or be deemed to have affected any power of electing or appointing churchwardens or making church rates, or other power which, at the time of the passing of the said Act, was vested in any such open vestry or meeting as aforesaid, or any elected or other vestry, where such vestry or meeting acts exclusively for any district (by whatever denomination distinguished) created for ecclesiastical (*c*) purposes only.

Other powers of vestries and like meetings declared to have been transferred to vestries under Act 18 & 19 Vict. c. 120, except powers transferred to district boards (*d*).

3. Save as hereinbefore otherwise provided, all the duties, powers, and privileges (including such as relate to the affairs of the church, or the management or relief of the poor, or the administration of any money or other property applicable to the relief of the poor), which might have been performed or exercised by any open or elected or other vestry or any such meeting as aforesaid in any parish, under any local Act or otherwise, at the time of the passing of the said Act of the last session, shall be deemed to have become transferred to and vested in the vestry constituted by such last-mentioned Act; except so far as any such duties, powers, or privileges may in the case of a parish included in any district mentioned in schedule (B.) to the said Act be vested by section ninety thereof in the board of works of such district: Provided that all duties and powers relating to the affairs of the church, or the management or relief of the poor, or the

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(*a*) This proviso is among the enactments which have ceased to be in force, &c.; expressly repealed by Statute Law Revision Act, 1875.

(*b*) See as to the right of a rector in a newly created parish under a private Act of Parliament to appoint one of the churchwardens; *Green* v. *the Queen*, L. R. 1 App. Ca. H. L. 513.

(*c*) The expression "ecclesiastical purposes" by the Church Rate Abolition Act, 1868, is defined to mean the building, rebuilding, enlargement, and repairing of any church or chapel, and any purpose to which by common or ecclesiastical law a church rate is applicable.

(*d*) These "duties, powers, and privileges" relate to the same matters as the "duties, powers, and authorities" mentioned in the original Act, the 18 & 19 Vict. c. 120, s. 90, and do not apply to the right of presentation to a church vested in trustees in trust for the parishioners and inhabitants; *Carter* v. *Cropley*, 26 L. J. Ch. 246; nor to the right of electing almspeople to a charity vested by the deed of foundation in the minister, churchwardens, overseers of the poor, and such of the parishioners as should pay taxation to the poor, and should not keep inmates or poor lodgers; *Attorney-General* v. *The Drapers' Company*, 22 J. P. 514; (*Kindersley* V. C.) 27 L. J. Ch. 542. See as to appointment of trustee of a charity by the vestry, constituted by Metropolis Local Management Act, *Re Hoyles's Estate*, 31 L. J. Ch. 612. This enactment has not repealed the proviso in the 197th section of the 18 & 19 Vict. c. 120, excepting from the operation of the Act accounts subject to the audit of an auditor, under the 4 & 5 Will. 4, c. 76. See *R.* v. *Directors of Poor of St. Pancras*, 27 L. J. M. C. 281.

Section 3.

administration of any money or other property applicable to the relief of the poor, which at the time of the passing of the said Act were vested in or might be exercised by any guardians, governors, trustees, or commissioners, or any body, other than any open or elected or other vestry, or any such meeting as hereinbefore mentioned, shall continue vested in and be exercised by such guardians, governors, trustees, or commissioners, or other body as aforesaid (*e*).

Occupiers may claim to be rated.

4. It shall be lawful for any person occupying any tenement within any parish to claim to be rated to the relief of the poor in respect thereof in the rate for the time being, and in all rates to be thereafter made in respect of such tenement, whether the landlord be or be not liable to be rated to the relief of the poor in respect thereof (*f*); and upon such occupier so claiming, by notice in writing left at the office or place of residence of the overseers of the poor of the parish, or one of them, and actually paying or tendering at such office or place of residence the full amount of the last-made rate then payable in respect of such premises, such overseers are hereby required to put the name of such occupier on the rate for the time being, and also, without further claim, to put his name upon every subsequent rate made during the time such occupier continues in the occupation of the same premises; and in case the said overseers neglect or refuse so to do, such occupier shall nevertheless, for the purposes of the said Act, be deemed to have been rated to the said rate in respect of such premises from the period at which the rate for the time being in respect of which he so claimed to be rated as aforesaid was made, and thenceforth so long as he continues in the occupation of the same premises (*g*): Provided always, that every person so claiming as aforesaid shall in respect of every rate for the relief of the poor made after such claim as aforesaid, while he continues to occupy the same premises, be liable to the same extent and in the same manner as if his name had been put on such rate.

(*e*) The power of making poor rates, originally possessed by the vestry of Spitalfields under local Acts, does not fall within this proviso. This is a declaratory Act adverting to the former Act (18 & 19 Vict. c. 120, s. 8), and declaring that it was the intention of the legislature to transfer these powers to the new vestry; *Vaughan* v. *Imray*, 28 L. J. M. C. 78. See *R.* v. *Rendle*, 30 L. J. M. C. 135, as to transfer to new vestry of power of appointing governors and directors of the poor for the parish of St. John, Southwark. The exceptions in this proviso do not empower the ecclesiastical commissioners to contravene the provisions of 18 & 19 Vict, c. 120, s. 143, and to erect a church beyond the regular line of buildings in a street; *Ecclesiastical Commissioners* v. *Vestry of Clerkenwell*, 25 J. P. 580. See 25 & 26 Vict. c. 102, s. 115, *post*, transferring to the vestry the duties, &c., vested under a local Act in the committee of management of the affairs of the parish of St. Paul, Covent Garden.

(*f*) See note to next section.

(*g*) The demand to be rated should be made on the vestry and not on the overseers; *R.* v. *Islington*, 8 L. T. (N.S.) 231.

A claim to be rated under 2 Will. 4, c. 45, s. 34, and 14 & 15 Vict. c. 14, s. 1, for the parliamentary franchise, to an assistant overseer was held good; *Caunter* v. *Adams*, 33 L. J. C. P. 68.

See the decision in *Goodhew* v. *Williams*, L. R. 3 C. P. D. 382, referred to in note to section 6 of 18 & 19 Vict. c. 120, Metropolis Management Act, 1855, *ante*, where, under the circumstances of the case, it was held that the defendant was neither "rated" nor "assessed" within that section, and that his liability to the penalty imposed by section 54 was not taken away by the provision in this section.

Section 5.

Composition not to be disturbed, and landlord's liability not to be affected (*a*).

5. Provided also, that in case where, by any composition with the landlord, a less sum is payable than the full amount of rate which, except for such composition, would be due in respect of the same premises, the occupier claiming to be rated shall not be bound to pay or tender more than the amount then payable under such composition: Provided also, that where, by virtue of any Act of parliament, the landlord is liable to the payment of the rate for the relief of the poor in respect of any premises occupied by his tenant, nothing herein contained shall be deemed to vary or discharge the liability of such landlord; but in case the tenant who has been rated for such premises in consequence of any such claim as aforesaid make default in the payment of the rate for the relief of the poor payable in respect thereof, such landlord shall be and remain liable for the payment thereof, in the same manner as if he alone had been rated in respect of the premises so occupied by his tenant.

Right of occupier so claiming to vote in elections.

6. Any occupier who under this Act is rated or deemed to be rated to the relief of the poor in any parish, and has been so rated or deemed to be rated for one year next before any election of vestrymen or auditors under the said Act, shall be entitled to vote in such election, and shall for the purposes of the said Act be deemed a ratepayer of such parish, and be entitled to act as such, provided all parochial rates (*b*), taxes, and assessments; save and except church rates (*c*), due in respect of the same premises at the time of his so voting or acting, except such as have been made or become due within six months immediately preceding such voting or acting, have been paid; but such occupier shall not be deemed to be a ratepayer so as to gain a settlement where he would not have gained a settlement if this Act had not been passed.

Payment of church rates not necessary as a qualification (*d*).

7. The provision in section sixteen of the said Act requiring all parochial rates, taxes, and assessments (except as therein excepted) to have been paid shall not be taken to include church rates.

(*a*) The 13 & 14 Vict. c. 99, with respect to the rating of small tenements, and so much of any local statute as relates to the rating of owners instead of occupiers, were repealed by the Poor Rate Assessment and Collection Act, 1869, 32 & 33 Vict, c. 41, s. 6; and see provisions in that Act as to agreements by owners of hereditaments not exceeding the rateable value specified (in the metropolis twenty pounds) to pay rates, and as to allowance to owners of commission, orders of vestries for the rating of owners, the constructive payment of rates by the occupier for the purpose of any qualification or franchise depending as regards rating upon the payment of the poor rate as to successive occupiers, and occupiers coming into possession of unoccupied hereditaments, and the duty of overseers to insert in the rate the names of occupiers, and as to other matters. See as to construction of section 19 of that Act for the purposes of a borough vote; *Cross* v. *Alsop*, L. R. 6 C. P. 315. See also *Smith* v. *Overseers of Seghill*, L. R. 10 Q. B. 422; *Barton* v. *Town Clerk of Birmingham*, L. R. W. N. (1878) p. 230; and *Bennett* v. *Atkins*, 43 J. P. 191.

(*b*) In *Palmer* v. *Earith*, 14 M. & W. 428, it was decided that a tenant who consented to pay all parochial and parliamentary taxes, was not bound to pay a sewers rate. The rate in that case was one made by commissioners under an ordinary sewers commission; but the rate made by vestries or overseers, under the Metropolis Local Management Act, is clearly a parochial rate.

(*c*) See next section.

(*d*) See *Tozer* v. *Child*, cited in note to section 15 of 18 & 19 Vict. c. 120, *ante*, and Compulsory Church Rates Abolition Act, 1868, referred to in note to section 1 of this Act.

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Rental to be determined by column headed "Rateable Value" (*e*).

8. And whereas by the Act of the session holden in the sixth and seventh years of King William the Fourth, chapter ninety-six, "to regulate Parochial Assessments," it is required that every rate for the relief of the poor shall, in addition to any other particular which the form of making out such rate shall require to be set forth, contain an account of every particular set forth at the head of the respective columns in the form given in the schedule to that Act annexed, so far as the same can be ascertained, and in the form in the said schedule are two columns headed respectively "Gross estimated Rental" and Rateable Value:" and whereas by the said Act of the last session it is required that in order to qualify a person to be elected a vestryman or auditor he should be rated to the relief of the poor upon a rental of such amount as therein mentioned: and whereas doubts (*f*) are entertained which of the amounts specified in the said two columns is to be deemed the "Rental" for the purposes of the last-mentioned Act:

The amount specified in the said column headed "Rateable Value" shall be deemed the "Rental" for the purposes of the last-mentioned Act.

Regulation of meetings of vestries constituted by 18 & 19 Vict. c. 120.

9. Every meeting of any vestry constituted by the said Act of the last session, of which and of the special purpose whereof notice is now by law required to be affixed on or near the principal doors of the churches and chapels within the parish, may be convened by transmitting through the post or otherwise notice, signed by the clerk to the vestry, to each vestryman, at his usual or last known place of abode in England, of the place and hour of holding the same, and the special purposes thereof, three days before the day appointed for such meeting, and also by affixing at the same time notice thereof on or near the door of any building where the said meeting is to be holden, and it shall not be necessary that notice of any such meeting shall be further or otherwise signed or published.

Section 144 of 18 & 19 Vict. c. 120, declared to extend to authorize applications to parliament for providing parks, &c. (*g*).

10. And whereas doubts are entertained whether the provision in section one hundred and forty-four of the said Act of the last session, authorizing the metropolitan board of works, where it appears to them that further powers are required for the purpose of any work for the improvement of the metropolis or public benefit of the inhabitants thereof, to make applications to parliament for that purpose, and providing that the expenses of such application may be defrayed as other expenses of the said board, extends to authorize applications to parliament by such board for powers for providing parks, pleasure grounds, places of recreation, and open spaces, and it is expedient to

(*e*) By the Valuation (Metropolis) Act, 1869, section 5, the valuation list for the time being in force shall be conclusive evidence of the gross value and rateable value of the several hereditaments included therein for the purpose (amongst others) of the poor rate. See other provisions of the same Act referred to in notes to section 159, *et seq.* of 18 & 19 Vict. c. 120, *ante*.

(*f*) See questions raised as to which rental was required by the 6th section of 18 & 19 Vict. c. 120, in *R.* v. *Churchwardens of Lambeth*, 19 J. P. 277; and *R.* v. *St. Mary, Lambeth*, 20 J. P. 277.

(*g*) The metropolitan board are empowered under the enactment referred to, to make, widen, or improve any streets, roads, or ways for facilitating the passage and traffic between different parts of the metropolis, and to contribute and join with any persons in any such improvement, &c.; and to make applications to parliament for such further powers as they may deem

Section 10.

remove such doubts: the powers given to the said board to make applications to parliament, and the provision for the expenses of such application, extend respectively to applications to parliament for the purpose of providing parks, pleasure grounds, places of recreation, and open spaces for the improvement of the metropolis or the public benefit of the inhabitants thereof, and to the expenses of all such applications.

District boards and vestries empowered to take ground to be maintained as an open space or pleasure ground (*a*).

11. Any district board or vestry may take, by agreement or gift, any land or any right or easement in or over land, for any estate or interest therein, and on such terms and conditions as they may think fit, for the purpose of such land being either kept as an open space or being kept and maintained as a pleasure ground for the public benefit of the inhabitants of the district or parish; but this enactment shall not authorize any expenditure to be defrayed by rates, except for the purpose of enclosing, maintaining, planting, and otherwise improving the same.

Recited Act and this Act to be as one.

12. The said Act of the last session and this Act shall be construed together as one Act.

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necessary, for the purpose of any work for the improvement of the metropolis or public benefit of the inhabitants thereof. The Acts obtained by the board for the objects specified in this section, and the 144th section of 18 & 19 Vict. c. 120, by the board are the Covent Garden Approach and Westminster Communication Act, 1857, the Victoria Park Approach Act, 1858, the Whitechapel and Holborn Improvement Act, 1865, the Kensington Improvement Act, 1866, the Marylebone (Stingo Lane) Improvement Act, 1868, the Park Lane Improvement Act, 1869, the Metropolitan Street Improvements Act, 1872, the Metropolitan Inner Circle Completion Act, 1874, the Metropolitan Board of Works (Various Powers) Act, 1876, the Metropolitan Streets Improvement Act, 1877, the Finsbury Park Act, 1857, the Southwark Park Act, 1864, the Victoria Park Act, 1872. See also reference in note to section 9 of Coal and Wine Duties Continuance Act, 1861, as to the Metropolis Improvement Act, 1863, for formation of a new street from Blackfriars to the Mansion House, and continuance of the northern embankment of the Thames.

See Acts relating to commons, open spaces, and other improvements under Metropolitan Commons Act, 1866, and Gardens in Towns Protection Act, 1863, and notes, *post*, Appendix.

(*a*) See the powers given to vestries and district boards by the 73rd section of 25 & 26 Vict. c. 102, *post*, for improving streets, &c., with the previous consent of the Metropolitan Board of Works; and the 73rd section, extending to the metropolis generally certain powers for regulating and improving streets, and for the suppression of nuisances conferred by the 57 Geo. 3. c. 29.

AN ACT

TO AMEND THE METROPOLIS LOCAL MANAGEMENT ACTS.

(25 & 26 VICT. CAP. 102.)

7TH AUGUST, 1862.

Section 1.

WHEREAS an Act was passed in the session of parliament holden in the eighteenth and nineteenth years of the reign of Her present Majesty Queen Victoria, intituled "An Act for the better Local Management of the Metropolis:" and whereas the said Act was amended by a certain other Act passed in the session holden in the nineteenth and twentieth years of the reign of Her present Majesty, chapter one hundred and twelve, and was further amended, and certain further and other provisions were made, by another Act passed in the session holden in the twenty-first and twenty-second years of the reign of Her present Majesty, chapter one hundred and four: and whereas it is expedient further to amend the said first-mentioned Act: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

18 & 19 Vict. c. 120.

19 & 20 Vict. c. 112.

21 & 22 Vict. c. 104.

Debt in respect of Counters Creek Works, and part of debt in respect of Ravensbourne works, redistributed and made payable out of moneys borrowed on the security of the main drainage rate (*a*).

1. Whereas the metropolitan commissioners of sewers, in exercise of the powers conferred upon them by the Act of the eleventh and twelfth years of the reign of Her present Majesty, chapter one hundred and twelve, did cause to be prepared and did approve of certain plans for the main drainage and sewage interception of the metropolis, and certain sewers and works included in and forming a portion of the plans so prepared and approved were constructed and completed by the said commissioners or by the metropolitan board of works; that is to say, the sewers and works known as the Counters Creek Diversion Works: and whereas the cost of the said works, amounting to the sum of £43,721 15*s.*, was defrayed by moneys borrowed on certain securities, which securities and moneys are included amongst and form part of the securities and moneys enumerated in schedule (A.) to this Act, and the debt incurred in respect thereof was charged by the said commissioners upon the following sewerage districts; viz. the Counters Creek, Ranelagh, and Fulham and Hammersmith districts, in certain shares and proportions, and has been

(*a*) The 181st section of the Metropolis Local Management Act (18 & 19 Vict. c. 120), *ante*, continues the debts and liabilities of the metropolitan commissioners of sewers a charge upon those districts or parts in which

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apportioned by the metropolitan board of works, pursuant to the 181st section of the firstly-recited Act, among the several parishes or parts of parishes which heretofore constituted the said districts, that is to say, Paddington, Chelsea, St. Mary Abbott's, Kensington, St. Margaret and St. John the Evangelist, Westminster, Hammersmith, Fulham, Willesden, St. Marylebone, St. George, Hanover Square, St. John, Hampstead, Acton, Ealing, and Chiswick: and whereas it is just and expedient that the cost of and incidental to the construction and execution of the said sewers and works, amounting to the sum aforesaid, should be deemed to be part of the expenses of and incidental to the works which the said metropolitan board are by the said Acts of the eighteenth and nineteenth Victoria, chapter one hundred and twenty, and the twenty-first and twenty-second Victoria, chapter one hundred and four, empowered and directed to construct and execute for the improvement of the main drainage of the metropolis, and for preventing, as far as may be practicable, the sewage of the metropolis from passing into the river Thames within the

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rates would have been levied to meet them in case that Act had continued in force, and directs that the sums becoming payable under or required for payment of such debts and liabilities should be raised in like manner as the expenses of the board in the execution of that Act; and with respect to districts or parts beyond the limits of the metropolis as defined by the same Act, it directs that precepts shall be issued to the overseers of the parishes in which any part within the limits of the parts is comprised requiring payment of the sums necessary to be raised in such part. The debts enumerated in the first schedule to this Act were charged by the metropolitan commissioners of sewers previously to the determination of the commission on certain sewerage districts or levels included within the limits subject to their jurisdiction. These districts or levels were formed with regard to the fall of the ground, the main lines of sewers, and other natural conditions; and they had no reference to the division according to parishes and districts forming the basis of the Metropolis Local Management Act. As the moneys required for payment of the former debts had, under the provisions of the last-named Act, to be raised in parishes or parts of parishes, it became necessary that the metropolitan board should apportion those debts among the parishes and parts of parishes constituting the former sewerage districts or levels. This they did in the proportion of the rateable value of the property in the respective parishes and parts of parishes, and except so far as concerns that portion of the debts referred to in schedule (A.) to this Act, which is dealt with by this section, the distribution or apportionment so made by the board is still in force. The reapportionment directed by this section was not to affect the validity of any precept already issued. The present section deals specially with two sums, one of £43,721 15*s.*, the cost of the Counters Creek works, and the other £10,000, a portion of the cost of the Ravensbourne works; and regarding them as having been designed and executed to the extent expressed in the clause as for the benefit, not of particular localities, but of the metropolis at large, it directs that the debts incurred on account of them shall be discharged out of the moneys raised under the Main Drainage Act (21 & 22 Vict. c. 104), instead of continuing them a charge on individual districts. Some of the parishes mentioned in the clause are without the limits of the metropolis as at present defined, *i.e. Willesden, Acton, Ealing*, and *Chiswick*. See the limits of the metropolitan commission in note to section 145 of 18 & 19 Vict. c. 120, *ante*. With respect to these, as well as to the other parishes enumerated, the 5th section of this Act empowers the board to make assessments in respect of unpaid balances of former precepts. See apportionment on a parish in respect of a debt of the Metropolitan Commissioners of Sewers; *Pew* v. *Metropolitan Board of Works*, cited in note (*c*), p. 113, *ante*.

Section 1.

metropolis: and whereas certain other works were executed by the said commissioners, known as the Ravensbourne works, and the cost of such works, amounting to the sum of £26,545 16s. 5d., was defrayed out of moneys borrowed on certain securities, which securities and moneys are included amongst and form part of the securities and moneys enumerated in the said schedule (A.) to this Act, and the debt incurred in respect thereof was charged by the said commissioners upon the following sewerage districts, viz., the Ravensbourne and Greenwich districts, in certain shares and proportions, and has been apportioned by the said metropolitan board of works, pursuant to the said firstly-recited Act, among the several parishes and places or parts of parishes and places which heretofore constituted the said districts; that is to say, St. Paul Deptford, Greenwich, Kidbrooke, Lewisham, Camberwell, Charlton, Eltham, and Lee: and whereas the last-mentioned works partly enure to the benefit of the metropolis at large, and it is just and expedient that a portion of the costs and charges thereof, amounting to the sum of £10,000, should be deemed to be part of the said expenses of and incidental to the works which the said metropolitan board are empowered and directed to construct and execute under the said Acts of the eighteenth and nineteenth Victoria, chapter one hundred and twenty, and the twenty-first and twenty-second Victoria, chapter one hundred and four: be it therefore enacted, that the debts incurred in respect of the costs and charges of the said Counters Creek diversion works, amounting to the said sum of £43,721 15s., and in respect of the said portion of the costs and charges of the said Ravensbourne works, amounting to the said sum of £10,000, making together the sum of £53,721 15s., shall cease to be the special debts and obligations of the said parishes and places and parts of parishes and places, and the same shall be deemed to have become, on the 1st day of January, 1856, transferred to and charged upon and shall stand charged upon the metropolis at large, as defined by the said firstly-recited Act, including the said parishes and places and parts of parishes and places comprised within the limits thereof; and all sums becoming payable under or required for the payment of any security given for the moneys so borrowed to the extent of the said sums of £43,721 15s., and £10,000, or of any interest due or to accrue thereon, shall be paid by the said metropolitan board of works out of any moneys which they may have already borrowed and raised or may hereafter borrow and raise on the security of the assessments or rates made or to be made by them for the metropolis main drainage rate under the provisions of the said Act of the twenty-first and twenty-second Victoria, chapter one hundred and four; and the said board shall take an account between the parishes, places, and parts aforesaid originally charged with the said debts and obligations and the metropolis at large to which the same are hereby transferred, and shall reimburse or give credit to the said parishes, places, and parts for any sums which may have been overpaid by them or any of them on account of principal or interest in respect of the said sums of £43,721 15s. and £10,000 respectively (if any), since the 1st day of January, 1856, beyond the sums which would have been due from them or any of them if the transfer and apportionment hereby directed had been in force on the 1st day of January, 1856, and the said board shall place any such excess to the credit of such parishes, places, or parts, in reduction of their next or some future ordinary assessment upon such parishes or parts, for defraying their expenses in the execution of the firstly recited Act.

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Application of part of moneys raised on security of metropolis main drainage rate to repayment of sums expended on Victoria-street sewer since 1st Jan. 1856.

2. And whereas at certain times between the 1st day of January, 1856, and the passing of this Act, certain works were executed by the said metropolitan board of works for the reparation and reconstruction of portions of one of the main sewers of the metropolis known as the Victoria Street sewer, and the expenses of and incidental to the execution of the said works were charged by the said board on certain parishes in the metropolis, which were heretofore included in the separate sewerage districts, known as the eastern division of the Westminster sewers, the western division of the Westminsters sewers, and the Regent Street and Regent's Park district, in certain shares and proportions, and were paid by the said board partly out of their general funds and partly by moneys raised in some of the said parishes; and whereas that portion of the said sewer in respect of which the said works of reconstruction and reparation were executed, will be incorporated with and form part of the main drainage works now in course of execution by the said board, under the provisions of the said Acts of the eighteenth and nineteenth Victoria, chapter one hundred and twenty, and the twenty-first and twenty-second Victoria, chapter one hundred and four, and will enure to the benefit of the metropolis at large, and the costs and charges of executing the same ought to be borne by the metropolis at large instead of by individual parishes: Be it therefore enacted, that the expenses of and incidental to the execution of the said works of reparation and reconstruction so executed by the said board between the 1st day of January, 1856, and the passing of this Act, shall be deemed to be part of the expenses of and incidental to the main drainage works which the said board are empowered to construct and execute under the said Acts of the eighteenth and nineteenth Victoria, chapter one hundred and twenty, and the twenty-first and twenty-second Victoria, chapter one hundred and four; and the said board shall, out of the moneys borrowed and raised or to be borrowed and raised by them for the metropolis main drainage rate under the provisions of the said Act of the twenty-first and twenty-second Victoria, chapter one hundred and four, replace the said moneys taken from the general funds of the said board for the payment aforesaid, and reimburse the moneys which the said parishes or any of them may have paid towards the said works of reparation and reconstruction between the 1st day of January, 1856, and the passing of this Act; and the said moneys so to be applied in reimbursing the said parishes shall be retained by the said board, and shall be carried to the credit of the said parishes, in reduction, so far as the same will extend, of the next or some future assessment upon such parishes by the said board for their expenses in the execution of the firstly recited Act.

Parishes, parts, and places on which debt on loan from the Clergy Mutual Assurance Society stands charged (*a*).

3. And whereas the said metropolitan commissioners of sewers did, in exercise of the powers vested in them by the said Act of the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve, borrow and take up at interest from a certain society known as the Clergy Mutual Assurance Society, on the security of certain rates authorized to be levied under the last-mentioned Act, the sum of £140,000, and there was previous to the 1st of November, 1860, due and owing to the said society from the metropolitan board of works, as the successors of the said metropolitan commissioners of

(*a*) This sum was originally raised by the metropolitan commissioners of sewers for the purposes of main drainage, under the provisions contained in 11 & 12 Vict. c. 112, s. 106, empowering them to borrow on the credit of all or any of the rates authorized to be raised under that Act. The money

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sewers, in respect of the said loan, the sum of £105,000, and it is expedient accurately to ascertain and determine the several parishes, parts, and places on which the debt in respect of the said sum of £105,000 shall stand charged, and on which moneys and rates are to be raised or levied for the payment of the principal and interest in respect of the same, and to ascertain and determine the proportions charged upon each : Be it therefore enacted, that the said debt of £105,000 shall be and stand charged upon and apportioned to the several parishes, parts, and places enumerated in schedule (B.) to this Act, in the several proportions specified in such schedule, and the said several parishes, parts, and places shall be deemed to be and shall be liable to the payment of the sums set against their respective names therein, and to the payment of interest thereon, and the moneys from time to time becoming payable under the said security, or required for or towards payment of the said debt or any part thereof, and the interest thereon, shall be raised by such board upon such parishes, parts, and places respectively in manner provided in respect of the expenses of such board in the execution of the firstly-recited Act : Provided always, that credit shall be given for any sums paid off in respect of the said loan previous to the passing of this Act according to the several proportions specified in the said schedule.

Saving rights and remedies of persons holding securities (*b*).

4. Provided, that nothing in this Act contained shall prejudice, abridge, diminish, or affect the priority (*c*) secured by the firstly-recited Act to the persons respectively entitled to the mortgages, annuities, securities, and debts referred to in the one hundred and eighty-first section of that Act, and the first, second, (*d*) and third

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having been borrowed for main drainage was unexpended at the determination of the sewers commission. The commissioners did not, as in the case of their other mortgage debts, charge it on individual districts. A special fund having been created for the construction of the main drainage works, these moneys were applied to the ordinary exigencies of the parishes and districts, and the enactment gives legislative sanction to that arrangement. In consequence of the difference between the limits of the sewers commission and the metropolis as now defined, it became necessary to ascertain and determine the parishes in which moneys for payment of principal and interest should be raised.

(*b*) This preserves the remedies of the mortgagees against the districts named in the original securities granted under the Sewers Acts, some of which, as already stated, were without the limits of the metropolis as now defined.

(*c*) The 181st section of the 18 & 19 Vict. c. 120, preserves such priority among the several mortgagees, &c., as they were, at the passing of that Act, entitled to under the Metropolitan Sewers Act, 1848, 11 & 12 Vict. c. 112, or any Act continuing or amending such Act. By the 106th section of the latter Act, mortgagees were entitled to be repaid the sums due to them without any preference by reason of priority; but by a subsequent Act, 17 & 18 Vict. c. 111, s. 4 (now expired) priority was given to all securities on the rates granted before a certain date, over and in preference to the mortgages or annuities under securities subsequent to that date; and subject to that priority all future mortgagees or annuitants were to come in *pari passu*. The provision contained in the 22nd section of the Metropolitan Board of Works (Loans) Act, 1869, empowering the board to levy a consolidated rate for the purposes therein specified, is not to extend to any sum levied under section 181 of the Metropolis Management Act, 1855, making provision for the liabilities of the metropolitan commissioners of sewers.

(*d*) This is a mistake, the word "second" having originally referred to a provision ultimately struck out, and it has been retained by inadvertence.

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sections of this Act, or the right of any or either of such persons to require and enforce payment of any principal or interest thereon, or in respect thereof, in, from, or out of all or any of the districts, assessments, rates, or moneys liable to such payment under or by virtue of their respective mortgages or securities; but all the securities, rights, and remedies of such persons respectively shall remain as good, ample, and effectual, to all intents and purposes, as if this Act had not been passed: provided also, that nothing herein contained shall prejudice or affect the power vested in the said metropolitan board, under the firstly-recited Act to borrow moneys for paying off former securities.

Sums to be assessed by metropolitan board.

5. From and after the passing of this Act the one hundred and seventieth section of the firstly recited Act is hereby repealed; and in lieu thereof be it enacted, that the metropolitan board of works shall from time to time ascertain and assess upon the several parts of the metropolis the several sums which, having regard to the annual rateable value (*a*) of the property in such parts respectively ought to be charged thereon for defraying the expenses of the said board in the execution of the firstly and secondly recited Acts and of this Act, and any such sums may be assessed wholly or in part in respect of expenses incurred or to be incurred, and also in respect of any unpaid balance of any former precept of the said board: Provided always, that such repeal shall not in any respect affect any act, matter, or thing whatsoever done or commenced to be done under or by virtue of the said firstly and secondly recited Acts, or any proceeding taken or to be taken under the thirdly recited Act, or to affect or prejudice, except as herein specially provided, in any way the rights or liabilities of any district or part under the one hundred

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The second section of the present Act has no reference to the mortgage debts in question.

(*a*) The repeal of the 170th section of the former Act, and the re-enactment of its provisions in the present form, got rid of the necessity of assessing the expenses of maintaining *main sewers* on particular sections of the metropolis, on the assumed ground that those parts had been peculiarly benefited by them; and the outlay on main sewers was assimilated to that applicable to the intercepting works, the formation of streets, and other matters within the cognizance of the metropolitan board. Before this Act, 21 & 22 Vict. c. 104 (Main Drainage Act), had already sanctioned a departure from the principle established by the repealed section, and enacted that for the purpose of the assessments under that Act, all parts of the metropolis should be deemed to be equally benefited by the expenditure under it. By the Metropolitan Board of Works (Loans) Act, 1869, s. 22, for the purpose of paying the dividends on and redeeming the consolidated stock, and also of defraying the expenses authorized to be incurred and incurred by them in the obtaining or the execution of the Acts mentioned in the 1st schedule to the Act or any of them and in defraying the sums required for the payment of the principal and interest of and the sinking funds for any securities granted by the board for the purposes of those Acts, or any of them, before the passing of that Act are required (in lieu of all rates or assessments authorized at the passing of the Act to be assessed by them generally on the metropolis) from time to time to assess and raise a rate to be called the metropolitan consolidated rate. Such rate to be assessed and raised in manner provided by the Metropolis Management Act, 1855, and the Acts amending the same with respect to the sums required for defraying the expenses of the board in the execution of that Act, and to sums assessed for the purpose of the Main Drainage Acts. See the Act, *post*, Appendix.

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and eighty-first section of the firstly recited Act, but the same shall be judged of in all respects as if this Act had not been passed.

Basis of assessment.

6. For the purpose of making any assessment under the preceding section, the board shall estimate the annual value of property according to the estimate or basis on which any county rate in force in any part of the metropolis is made, or, where there is no such county rate, according to a like estimate or basis (*b*).

Mode of assessment by the metropolitan board of works (*c*).

7. All such assessments to be made by the metropolitan board of works shall be assessed and charged by the said board upon the same basis and in the same manner as the county rate is assessed and charged by the justices under the statutes in force for assessing and charging county rates in England and Wales: Provided always, that all precepts shall be issued and rates levied by the said board in manner directed by the several recited Acts relating to the better local management of the metropolis and by this Act, so far as relates to making precepts and levying rates.

Assessments and precepts of metropolitan board may be according to forms in schedule (C) (*d*).

8. The assessment of any moneys to be assessed by the metropolitan board of works for the expenses of executing the firstly and secondly recited Acts and this Act, and the precepts for obtaining payment of moneys required by the board for that purpose, may be according to the forms contained in schedule (C.) to this Act, or to the like effect.

Any vestry or district board may pay precept of metropolitan board out of any money in their possession, and reimburse themselves out of sewer rate.

9. The vestry of any parish mentioned in schedule (A.) to the firstly recited Act, or the board of works for any district to whom any precept of the metropolitan board shall be directed, may, if they shall see fit, pay to the person or body authorized by the said metropolitan board to receive the same the sum required by such precept, within such time as may be therein mentioned, out of any moneys in their possession at the time of their receiving such precept, or which may come into their hands at any time within two calendar months next after the service thereof; and all payments so made by any vestry or district board shall be charged by them against and reimbursed to them out of the moneys which the said vestry or district

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(*b*) That meant, according to any estimate founded on the criterion established by the County Rate Act, viz., the full and fair annual value of the property rateable to the relief of the poor. It was held under section 10 of 21 & 22 Vict. c. 104, that in the absence of an estimate for the county rate, the board might make the parochial rate the basis for the main drainage assessment on the commissioners of sewers of London; *Commissioners of Sewers of London* v. *Metropolitan Board of Works*, 31 J. P. 404, 16 L. T. (N. S.) 351. See now the Valuation (Metropolis) Act, 1869, s. 45, making the valuation list for the time being in force made under that Act conclusive evidence of the gross and rateable value of the hereditaments included therein, and of the insertion therein of such hereditaments, for the purposes, amongst others, of the main drainage, improvement and other rates assessed on any part of the metropolis by the Metropolitan Board of Works. The Valuation (Metropolis) Act, 1869, 32 & 33 Vict. c. 67, s. 77, schedule 5, repeals so much of this (the 6th) and of the 7th and 13th sections as authorizes or relates to the ascertaining the value of any hereditament with respect to the value of which the valuation list is conclusive, and so much of any Act as applies to the provisions hereby repealed.

(*c*) See note to previous section.

(*d*) See note to section 22 of Metropolitan Board of Works (Loans) Act, 1869, *post*, Appendix.

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board shall and which they are hereby required to raise and collect by virtue of such precept (*a*).

Vestries may include in the sewers rate precepts of metropolitan board.

10. Where by any local Act of parliament the poor rate in any parish in schedules (A.) or (B.) to the firstly recited Act is made by the vestry of such parish at a fixed period or periods in every year, it shall be lawful for such vestry, at their discretion, to include in the sewers rate for their parish such sum or sums of money as they may consider necessary to meet any precepts received or to be received from the metropolitan board of works during the period for which such poor rate extends, to defray the expenses of the said board in the execution of the said first-recited Act; and at the time of making such poor rate, also to make a separate rate for the metropolis main drainage, to meet the precept received or to be received from the metropolitan board of works for the sum assessed for such rate during the year, such rates to be levied in the same manner, for the same period, upon the same persons, and to be subject to the like provisions as the sewers rate by the first recited Act, and to be contained in the same book or books as the poor rate of the said parish, but distinguishing the title of each of the said separate rates or assessments, and to be collected quarterly or otherwise by such person or persons as shall be appointed by the said vestry to receive and collect the same: Provided that nothing herein contained shall prevent the said metropolitan board of works from requiring payment, or relieve the vestry of any parish from the payment, of the sums assessed by such board at such times as they are now entitled by precept to require the same.

Sums collected in places in schedule (C.) to 18 & 19 Vict. c. 120, beyond amount of rate for main drainage rate, &c., to be placed to credit of such places.

11. Where, under or by virtue of any rate or assessment made by an assessor appointed by the said metropolitan board of works, for the metropolis main drainage rate, any moneys shall have been or shall be collected in any place mentioned in schedule (C.) to the firstly recited Act beyond the amount required to satisfy the amount of the assessment of the said board upon the said place, and the expenses of and incidental to the preparing, making, collecting, and levying such rate or assessment, the excess shall be placed by the said board to the credit of such place, on account of the next assessment upon such place by the said board for the metropolis main drainage rate.

Payment of sums assessed upon places in (*b*) said schedule (C.)

12. For obtaining payment of the sum assessed upon any place mentioned in schedule (C.) to the firstly recited Act for the metropolis main drainage rate, the said board shall issue a precept under their seal requiring payment of the amount mentioned in such precept to their treasurer, or into any bank therein mentioned, within such time or times as may be therein limited, and every such precept shall be directed to the masters of the bench, treasurer, governors, or other body or persons having the chief control or authority in such

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(*a*) See the Metropolitan Board of Works (Loans) Act, 1869, s. 24, as to the necessity of distinguishing in orders of vestries and district boards on overseers the sums required for satisfying or replacing any sum expended on satisfying the precepts of the metropolitan board, and the sum (if any) required for other purposes of the vestry or district board, and as to demand notes and receipts of overseers or collectors.

(*b*) See section 25 of Metropolitan Board of Works (Loans) Act, 1869, as to liabilities of the places in schedule (C.) to the metropolitan consolidated rate.

place; and the body or persons to whom any such precept shall be directed shall raise and levy the money required by the same by means of a separate rate, in like manner and subject to the like provisions as the sewers rate to be made under the provisions of the firstly recited Act and this Act; and the said body or persons may appoint one or more persons to collect any such rate, and may pay him or them such salary, poundage, or allowance as they may deem just and reasonable, and may take such security from every such collector for the due execution of his duty as they shall think reasonable and proper; and the several provisions hereinafter contained with respect to the levying, paying over, and accounting for moneys levied by collectors by direction of any vestry shall be applicable to every such collector; and the several enactments with respect to the levying of moneys by the said metropolitan board on the default of vestries and district boards shall apply (*c*) in case of a default by the body or persons to whom any such precept may be directed by the said board to levy and pay over the money therein named according to the exigency thereof.

Metropolitan board may amend assessments and precepts where necessary (*d*).

13. It shall be lawful for the metropolitan board of works, in case of any omission or other inaccuracy in any assessment or precept which they have made or issued, to make such amendments or alterations therein as may render the same conformable to the provisions of the recited Acts and this Act; and it shall be lawful for the said board, should they deem it requisite and proper, to revoke any precept which they may have issued, and to issue another precept in lieu thereof.

Overseers to pay over and account for moneys to vestries and district boards (*e*).

14. Whenever any vestry or district board shall by their order require the overseers of any parish or place to levy and pay over the sum or sums of money which such vestry or board may require, under the provisions of the said recited Acts or this Act, such overseers shall, within such period after the levying of the said sum or sums or any part thereof as the said vestry or board shall determine, pay over to the treasurer of the said vestry or board, or to any officer, or into any bank in such order mentioned, the amount mentioned in such order, and the excess, if any, which may have been levied beyond such amount, less the expenses of and incidental to the making and collecting of the same, and shall make out and deliver to the said vestry or board a true and perfect account in writing signed by them, and duly audited by the auditors appointed for such parish or place under the provisions of the firstly recited Act, of all moneys and rates received by them in pursuance of the said order, and shall for such purpose produce to the said auditors the vouchers, counterfoils, or receipts for all payments made to or by them; and such auditors shall, for the purposes of the said audit, have all and every the powers and authorities given to the auditors named in the 195th section of the firstly recited Act; and in case any overseers shall fail to pay over such moneys or rates as aforesaid, or to render such account, or to produce such vouchers, counterfoils, and receipts for the space of twenty-one days after being thereunto required, they shall be subject to the penalties mentioned and contained in

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(*c*) See 21 & 22 Vict. c. 104, s. 15, as to the rates to be made by the metropolitan board on default of vestries, &c.

(*d*) See note to section 6, *ante*.

(*e*) See reference in note to section 9, *ante*, as to requirements on orders of vestries and district boards on overseers, and in demand notes and receipts.

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the 65th (*a*) section of the firstly recited Act; Provided always, that where the term "overseer" or "overseers" shall extend to and include any vestry elected under the firstly hereinbefore recited Act, or any board of trustees or governors of any parish or place chosen under any local Act now in force (*b*), the provisions of this clause shall not be applicable to such vestry or board of trustees or governors so long as the orders of the vestry or board shall be duly complied with and satisfied; and in every case in which the vestry does not appoint a collector or collectors to collect such rates, the said overseers are hereby authorised to employ and pay one or more collector or collectors to collect all such rates, and to take from every such collector security (*c*) for his duly collecting such rates, and paying over and accounting for the same, and such security shall enure to the benefit of the overseers for the time being of every such parish or place, who shall have all such and the same remedies thereon as the overseers to whom such security was originally given.

Power to metropolitan board, vestries, and district boards to demand to be furnished with copies of poor rates, &c. (*d*).

15. It shall be lawful for the metropolitan board of works, or for the vestry of any parish mentioned in schedule (A.) to the firstly recited Act, or for any district board, by order in writing, to require the vestry clerk, overseer, collector, or other person having the custody or control of any rate for the relief of the poor in any parish or place, or of any other rate, or of any book containing a copy of any such rate as aforesaid, to furnish, within such period, not being less than seven days, as shall be limited in such order, a true copy of such rate for the relief of the poor, or other rate, or of such copy thereof as aforesaid, or of such part or parts of the same as shall be specified in such order, on payment or tender for such copy at the rate of 6*d.* for every twenty-four names (inclusive of all the particulars in the several columns in the rate, so far as such particulars have reference to such names respectively), and the said copy shall be examined by and signed by such vestry, clerk, overseer, collector, or other person, and shall be verified by his solemn declaration, if the said metropolitan board or vestry or district board shall require the same, which solemn declaration any justice of the peace or commissioner duly authorized, is hereby empowered to administer; and any person having the custody or control of such rate, or copy thereof, who shall refuse or neglect to make and deliver to such metropolitan board, vestry, or district board, or any person by them authorized to receive the same, such copy or extract, or to make such solemn delaration as aforesaid, shall be liable to a penalty not exceed-

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(*a*) By the 65th section, if any officer or servant fail to account, &c., he is to be committed to gaol, there to remain until he shall have rendered a true and perfect account, &c., and if he has failed to pay over moneys, and still fail or refuses to do, the money may be levied by distress, and in default of distress, he may be committed for a period not exceeding three months. See the decisions with respect to a failure to account, &c., referred to in note to section 65 of 18 & 19 Vict. c. 120, *ante*.

(*b*) See definition of word "overseer," in section 250 of 18 & 19 Vict. c. 120, *ante*, p. 188.

(*c*) As to the security for the faithful performance of duty by officers, see note to section 65 of 18 & 19 Vict. c. 120, *ante*.

(*d*) The 171st section of the original Act, 18 & 19 Vict. c. 120, authorized the clerk of the metropolitan board to inspect the county rate and city sewer rate valuations and other accounts, and to take extracts, &c.; and by the 16th section of 21 and 22 Vict. c. 104 (Main Drainage Act), those provisions are extended to all other rates within the metropolis.

ing £10 for every such offence, and to a further penalty not exceeding £10 for each and every day during which the said offence shall be continued, to be recovered by a summary proceeding (*e*).

Expenses incurred by vestries named in schedule (B.) in execution of Acts to be paid by district boards.

16. Whenever the vestry of any parish mentioned in schedule (B.) to the firstly recited Act shall have lawfully incurred any expenses in the execution of the said recited Acts or this Act, the board of works for the district in which such parish may be situate shall, in case the payment of such expenses is not otherwise provided for pay and discharge the amount of such expenses out of the moneys which they are by the firstly recited Act authorized to raise for the payment of the expenses of the execution of such Act.

Recovery of moneys assessed by metropolitan board on extra-parochial property for payment of debts (*f*).

17. The sums from time to time assessed by the metropolitan board of works upon or in respect of any extra-parochial or other property which was included in any separate sewerage district under the metropolitan commission of sewers, for or towards payment of any debt or debts charged upon such district at the determination of the said Act of the eleventh and twelfth Victoria, chapter one hundred and twelve, or of any interest thereon, for the payment of which provision is not otherwise made in the said recited Acts or this Act, shall be paid, on demand, to the said board by the occupier of the tenements or premises, or by the person or persons in receipt of any tolls or profits issuing out of any incorporeal hereditaments in respect of which such assessment shall be made, and every such sum may be recovered by the said board by an action at law or by a summary proceeding before a justice at the option of the said board.

One summons only to issue for the recovery of rates (*g*).

18. In any proceedings before any justice or justices, by or on behalf of any vestry, district board, overseer, or collector, against the occupier or owner of any premises, for the recovery of any rates assessed under the said Acts or this Act which may be in arrear, all the rates for the recovery of which such proceedings shall be taken shall be included in the same summons, and the charge for such summons shall not exceed 1*s.*, and the signature of any justice or justices to any such summons may be either in writing or by a stamp affixed as such justice or justices may direct.

Parties lending money to metropolitan board or vestries or district boards not bound to inquire into

19. Whereas by the firstly recited Act power is given to the metropolitan board of works and to any district board or vestry to borrow money for the purpose of defraying any expenses incurred by them in the execution of the said Act, on the credit of all or any of the moneys or rates authorized to be raised by them under the said Act: Be it enacted, that no corporate body or person or persons lending or proposing to lend money to the said metropolitan board or any vestry

(*e*) As to recovery of penalty, see section 102, *post*.

(*f*) The 18 & 19 Vict. c. 120, made no provision for the recovery of the sums payable in respect of certain extra-parochial property towards the payment of mortgage debts charged on the sewerage districts in which such property was situated, as they could not be included in the rates made by overseers for payment of the precepts issued to vestries and district boards.

(*g*) By 25 & 26 Vict. c. 82, any number of local rates and taxes due from the same person may be included in the same information, complaint, summons, order, warrant, or other document required by law to be laid before or issued by justices; and the Act provides that no costs shall be allowed in respect of several complaints, &c., when in the opinion of the justices or court one might have sufficed.

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or district board, under the provisions of the said Acts or this Act, or of any Act or Acts for amending the same, or of any Act or Acts empowering them or either of them to borrow money, shall be bound to see or obliged to inquire whether the money lent or proposed to be lent is advanced for the purposes of such Acts, nor to see or inquire into the application of the money so lent, or any part thereof; nor shall any such respective body or person or persons be bound or required to ascertain that the board or vestry so borrowing, or the meeting or meetings of such board or vestry, was or were properly constituted or convened, or that the proceedings at any meeting were legal or regular; and the common seal of every such board or vestry impressed upon or affixed, pursuant to the order or resolution of such board or vestry (*b*) to any mortgage, bond, or other instrument which may have been made or granted by the said board or vestry, shall be binding and conclusive on the said board or vestry by whom any such mortgage, bond, or other instrument may have been so sealed and executed, and their successors.

Public loans commissioners authorized to lend money to metropolitan board, vestries, &c. (*c*).

20. It shall be lawful for the commissioners acting in the execution of the Act of the session holden in the nineteenth and twentieth years of Her Majesty, chapter seventeen, and in the execution of any of the Acts recited in that Act, or of any Act or Acts for amending or continuing the same Acts or any of them, to make advances to the metropolitan board of works, or to any vestry or district board, upon the security of all or any of the moneys or rates to be assessed or levied by them under the said recited Acts or this Act, and without requiring any further or other security than a mortgage of such moneys or rates, repayable by such instalments, within a period not exceeding thirty years, as shall in each case be agreed upon.

Power to stop up carriage or footways, &c.

21. It shall be lawful for the said metropolitan board, and they are hereby authorized and empowered, during the construction of any works by them under the recited Acts or this Act, subject to the provisions of such Acts to cause to be stopped up all or such part of the carriage or footway of any streets, roads, or ways as may be necessary for the due execution of the said works.

Power to metropolitan board to take lands for roads, &c. (*d*).

22. The compulsory powers of taking land given to the said metropolitan board by the firstly recited Act, and the "Lands Clauses Consolidation Act, 1845," shall, subject to the conditions and restric-

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(*a*) A provision similar in effect was contained in the 3rd section of 17 & 18 Vict. c. 125, an Act for continuing and amending the Metropolitan Sewers Act, 1848. This section, the 20th and the 26th sections, are repealed so far as regards the Metropolitan Board of Works by the Metropolitan Board of Works (Loans) Act, 1869, except so far as they relate to any securities granted, and the application of any money raised before the passing of the Act, and the rates and moneys for payment of such securities while undischarged. See the 42nd section of the same Act, exempting purchasers of consolidated stock from inquiries into the application of money, regularity of proceedings, &c.

(*b*) Where the seal of a company acting under the Companies Clauses Act, 1845, was affixed to a contract without lawful authority, the company were held not liable; *D'Arcy* v. *Tamar, &c., Railway Company*, L. R. 2 Ex. 158.

(*c*) Repealed so far as regards the Metropolitan Board of Works, except as to securities, &c. See note to preceding section.

(*d*) The Railway Clauses Act, 8 Vict. c. 20, authorizing the construction

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tions in the firstly recited Act contained, extend and be applicable to the taking of any lands which they may require for the purpose of making convenient roads or ways to or in connexion with any sewers or works vested or hereafter to be vested in the said board, or which they may require for making roads or ways during the construction of any sewerage works, or for spoil banks or places of deposit of surplus earth or other materials in the execution of any such works.

Votes exceeding £20,000 to be confirmed.

23. No resolution made or passed after the passing of this Act by the said metropolitan board, authorizing the expenditure upon or the construction of any works, the estimated cost of which shall amount to or exceed the sum of £20,000, shall be carried into execution or be deemed valid and binding until the same shall have been confirmed at a subsequent meeting of the said board duly (*e*) convened.

Maintenance of bridges, culverts, &c.

24. When the said metropolitan board shall, in exercise of the powers conferred upon them, have constructed any bridges, culverts, arches, or passages in connexion with any sewers or works, all such bridges, culverts, arches, and passages shall at all times after the construction thereof be maintained at the expense of the said board.

Formation and maintenance of bridges, arches, culverts, &c. (*f*).

25. It shall be lawful for the said metropolitan board to make and maintain any bridges, arches, culverts, passages, or roads over, under, or by the sides of or leading to or from any sewerage works constructed or to be constructed by them, which they may deem necessary and convenienf for preserving the communications between lands through which the said works may have been or may be made or carried; provided that it shall be lawful for the said board to contract and agree with the owners and occupiers of lands to pay them or any of them compensation in lieu of making or maintaining such bridges or other works.

Time limited for completion of works specified in section 1 of 21 & 22 Vict. c. 104 (*g*).

26. The extension of time authorized and directed by the twenty-sixth section of the thirdly recited Act, the twenty-first and twenty-second Victoria, chapter one hundred and four, shall be deemed to apply to the sewers and works mentioned in the first section of that Act for the improvement of the main drainage of the metropolis, and for preventing, as far as may be practicable, the sewage of the metropolis from passing into the Thames within the metropolis.

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by railway companies of accommodation and subsidiary works, is not incorporated with the Metropolis Local Management Act (18 & 19 Vict. c. 120); and the works specified in the 150th section of that Act for which the board may take land compulsorily do not extend to the purposes mentioned in this section.

(*e*) This, no doubt, means convened as a special meeting by a notice specifying its object in the mode prescribed by the 52nd section of 18 & 19 Vict. c. 120. See note to that section, *ante*.

(*f*) It has already been stated (see note to section 22), that the Railway Clauses Consolidation Act not being incorporated with the Metropolis Management Acts, the provisions in it as to the construction and maintenance of accommodation works do not apply. The 24th and this section make provision for these objects.

(*g*) This section corrects an accidental inaccuracy of expression occurring in the 26th section of 21 & 22 Vict. c. 104 (Main Drainage Act), by which the intercepting works are described in the words of the 135th section of 18 & 19 Vict. c. 120, viz., as works for preventing sewage from passing into the Thames "in or near to the metropolis," instead of "within the metro-

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As to trapping of gullies connected with main sewers.

27. No gully or ventilating shaft immediately connected with or appertaining to, or which hereafter may be immediately connected with or appertain to, any sewer vested in the metropolitan board of works, shall be trapped, covered, or closed up without previous notice in writing being given to the said board, nor if the said board or their engineer within one week after the giving of such notice shall express in writing their or his objection to the same (*a*).

Powers as to sewerage not to be transferred to metropolitan board without consent of that board.

28. Notwithstanding the provision contained in the eighty-ninth section to the firstly recited Act, relative to the transfer by vestries and district boards to the metropolitan board of works of their powers and duties in relation to sewerage and drainage, it shall not be lawful for any vestry or district board to transfer to the metropolitan board of works any such powers or duties without the previous consent in writing of the said metropolitan board.

Orders to be made by committee on appeals against acts of vestries and district boards.

29. Under the provisions of the two hundred and eleventh and two hundred and twelfth sections of the firstly recited Act, empowering the committee of appeal of the metropolitan board of works to hear and determine an appeal against any order or act of any vestry or district board, the said committee may allow or dismiss the appeal, or quash or confirm or vary the order appealed against (*b*).

Committee empowered to make improvement rates, &c., for expenses of works of private improvement executed by the commissioners of sewers, and take other proceedings in relation thereto (*c*).

30. In any case in which the metropolitan commissioners of sewers have incurred any expenses authorized by the Act of the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve, to be paid by an improvement rate, or as charges for default, it shall be lawful for the committee of appeal appointed under and in pursuance of the two hundred and twelfth section of the firstly recited Act, to levy improvement rates or charges for default for the recovery of the whole of such expenses, or such portion thereof as shall still remain due and unpaid, in the manner directed by the said Act of the eleventh and twelfth years of the reign of Her Majesty chapter one hundred and twelve, and the said committee shall have all the rights and remedies for the recovery thereof which are vested in the said metropolitan board in that behalf; and if any person liable to the payment of any such improvement rate or charges for default fail to pay the same when due, or for the space of fourteen days after the same shall have been lawfully demanded, the said committee of appeal may and they are thereby empowered to summon the defaulter to appear before them to show cause why such improvement rate or charges for default so in arrear should not be paid; and in case the defaulter fail to appear according to the exigency of the summons, or if no sufficient cause for non-payment be shown, the said committee may by warrant under the seal of the board cause the amount of such improvement

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polis," according to the 1st section of the first-named Act. This section is repealed so far as relates to the Metropolitan Board of Works; see note to section 19, *ante*.

(*a*) The 71st section of the original Act, 18 & 19 Vict. c. 120, vests the absolute power of trapping, &c., in vestries and district boards.

(*b*) The section referred to only enabled the committee to hear and determine appeals, but gave them no power to vary an order appealed against.

(*c*) The 182nd section preserves to the board all the rights and remedies of the metropolitan bill, the commissioners of sewers for the recovery of improvement rates, and charges for default, &c.

rate or charges for default so in arrear to be levied by distress of the goods and chattels of the defaulter. Section 30.

Part of section 58 of 18 & 19 Vict. c. 120 repealed.

31. So much of section fifty-eight of the said Act of the eighteenth and nineteenth of Victoria as provides that the acts of every committee shall be submitted to the general body of the board or vestry appointing such committee, for their approval shall be repealed so far as relates to the metropolitan board; and be it enacted in lieu thereof, that the said metropolitan board shall be at liberty to give such instructions to any committee appointed by such board regulating the conduct of any business deputed to such committee, and such committee shall act in conformity therewith, and shall report to the board all acts done by them in conformity with such instructions (*d*).

Communications between sewers in different parishes or districts, and payment of compensation, &c., in consideration thereof (*e*).

32. Whereas it is in and by the firstly recited Act provided that the metropolitan board of works shall from time to time, in order to secure the efficient maintenance of the main and general sewerage of the metropolis, make such general or special orders as to them may seem proper for the guidance, direction, and control of the vestries of parishes and district boards in the levels, construction, alteration, maintenance, and cleansing of sewers in their respective parishes or districts, and for securing the proper connexion and intercommunication of the sewers of the several parishes and districts, and their communications with the main sewers vested in the said metropolitan board, and generally for the guidance, direction, and control of vestries and district boards in the exercise of their powers and duties in relation to sewerage, and all such orders shall be binding upon such vestries and boards: Be it enacted, that whenever the said metropolitan board shall, in exercise of the said power, have ordered that any sewer or sewers vested in the vestry, district board, or other body (*f*) acting for any parish or place comprised in the schedules of the firstly-recited Act, having control over the sewers in one parish,

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(*d*) See case of *Cook* v. *Ward*, W. N. (1877) p. 110, as to the delegation of powers by a committee; cited in note to section 58 of 18 & 19 Vict. c. 120, *ante*.

(*e*) This provision enables the metropolitan board to direct the payment of a pecuniary consideration to any body having control over sewers where their works are made use of for the benefit of another parish or district—a power not contained in the original Act.

(*f*) The exercise of this power is restricted to parishes and districts named in the schedules, therefore the city of London is excluded from the operation of the clause. One of the earliest examples of an arrangement very similar to that contemplated by this clause is presented in the case of a communication between the sewers of the Holborn and Finsbury divisions and those of the Corporation of London. By one of the local Acts of that commission, 18 Geo. 3, c. 66, in consideration of the benefit accruing to the Finsbury division, St. Leonard, Shoreditch, and Norton Folgate, from the sewers of those localities being permitted to run into the sewers of the city of London, the above-named commissioners were required to pay an annual sum of £150 into the chamber of the city of London for ever. That sum was, it is believed, regularly paid by the Holborn and Finsbury commissioners, and by their successors, the metropolitan commissioners of sewers, to the Corporation down to the year 1855. See provisions in Beckenham Sewerage Act, 1873, for connection between sewers of the parish of Beckenham and the sewers of the Lewisham Board of Works, and other Acts referred to in note to section 135 of Metropolis Management Act, 1855, *ante*.

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district, or part, shall, for the purpose of outfall or otherwise, be connected with any sewer or sewers vested in the vestry or district board of another parish, district, or part, or other body having control over the sewers in such parish, district, or part, it shall be lawful for the vestry, district board, or other body, for the drainage of whose parish, district, or part, such connexion shall be required, and at whose instance and request such order shall have been made, to execute all necessary works as well within their own parish, district, or part as within any other parish, district, or part which shall be specified in the said order of the metropolitan board for effecting such connexion: Provided that every communication to be made by any vestry, district board, or other body with any sewer out of their own parish, district, or part shall be made under the supervision and to the satisfaction of the board, vestry, or other body having control over such last-mentioned sewer; and where it shall appear to the said metropolitan board to be equitable and just, under the circumstances of the case, that any vestry, board, or other body so connecting their sewers with the sewers vested in another vestry, district board, or other body should pay such last-mentioned vestry, board, or body any compensation or remuneration, either in one sum or by yearly or other payments, for the use of their sewer, it shall be lawful for the said metropolitan board to order and direct payment of such compensation or remuneration accordingly, and the vestry, board, or other body to whom any such payment shall be directed to be made may recover the same from the vestry, board, or body directed by such order to make such payment, either by action at law or before a justice of the peace in a summary manner.

Regulations as to breaking up turnpike roads.

33. The one hundred and fifty-seventh section of the firstly-recited Act is hereby repealed; and in lieu thereof be it enacted, that the metropolitan board of works, and any vestry or district board may, where necessary for the purpose of executing any work authorized by the recited Acts or this Act, open and break up any turnpike road under and subject to the restrictions and provisions hereinafter contained; that is to say, three days' previous notice, with a full description of any intended works, shall be left at the office of the commissioners or trustees of the road, and, except by the permission of the said commissioners or trustees, the traffic of the road shall not at one time be stopped or hindered along more than half of its width, nor, if the half left open be of less than the clear width of fourteen feet, along more than one hundred yards in length, and the party doing the works shall cause all openings in the road to be effectually secured and fenced, and affix and maintain lights during the night near to the place where the ground is open, so as to prevent accidents; and the said commissioners or trustees are hereby absolved from all liability in respect of any accident arising in consequence of such works; and the party doing the work shall restore every road so opened or broken up to its original state as to surface and materials(*a*), and, in order to meet the future expenses consequent on the subsidence of materials newly filled in, shall pay to such commissioners or trustees, on demand, such sum as they shall require for such purpose, not exceeding 1*s.* for every superficial square yard, and, so far as the

(*a*) See *Hyams* v. *Webster*, L. R. 2 Q. B. 264; 4 Q. B. (Ex. Ch.) 138, where it was held that the contractor of the Metropolitan Board of Works, who had properly reinstated a highway (not a turnpike road), was not liable for subsequent natural subsidence.

works affect the same, shall make good all drainage, paving of water channels, kerbs, or footpaths, and other matters and things connected with the maintenance of the road, and in default the surveyor of the said commissioners or trustees may cause the necessary work to be done; and in all cases of expense incurred by any such surveyor on the default of the party doing the works, such party shall pay such expense to the commissioners or trustees on demand. Section 33.

Plan, &c., of works affecting railways or canals to be submitted to companies (*b*).

34. Where any works authorized by this or the recited Acts will interfere with any railway or canal, the board or vestry proposing to construct such works shall before commencing the same give notice in writing of their intention so to do to the company owning such railway or canal, and shall, together with such notice, deliver a plan and section showing the nature of such interference; and if within seven days after the receipt of such notice the company shall by writing, addressed to the board or vestry, object to the manner in which it is intended to interfere with such railway or canal respectively, on account of the probable interruption or endangering of the traffic thereon, the same works shall not be commenced; and it shall thereupon be referred to an engineer, to be appointed by the board of trade, on the application of either party, to determine the manner of executing the said works, and the determination come to by such engineer shall be binding on both parties.

Line of railway not to be altered.

35. Provided always, that it shall not be lawful for any board or vestry to alter the level of any railway or canal, unless with the consent of the company owning the same respectively. or, if that be refused, with the consent of the board of trade; and provided also, that nothing in this Act contained shall take away or affect the right of any railway or canal company to compensation for the taking or injuriously affecting (*c*) of any land or property of such company, or for or by reason of the interruption of any traffic on their railway or canal, or for any damages, costs, or expenses which such company may be required to pay in consequence of such interruption.

Inspectors of votes to appoint umpire (*d*).

36. The inspectors of votes directed to be appointed under the firstly-recited Act for any parish, or, where any parish is divided into wards, for any ward of a parish, may, before commencing the duties of their office under the said Act, appoint by writing under their hands an umpire; and in case the said inspectors shall be unable

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(*b*) The case of the *North London Railway Company* v. *The Metropolitan Board of Works*, 28 L. J. Ch. 909, is an authority that, under the 69th and 135th sections of 18 & 19 Vict. c. 120, boards and vestries might enter private lands without notice in order to construct sewers. This clause restricts that right so far as concerns works interfering with railways and canals, and renders a notice necessary.

(*c*) The compensation directed by the 135th section of the original Act, 18 & 19 Vict. c. 120, is for "damage done." The expression "injuriously affecting" is the same as in the 68th section of the Lands Clauses Act, 8 Vict. c. 18. On the subject of compensation, see notes to sections 135, 152, and 225 of 18 & 19 Vict. c. 120, *ante*.

(*d*) See section 16 of the original Act, 18 & 19 Vict. c. 120, as to the nomination of inspectors, and sections 18, 19, and 22 as to their duties. In *Goodhew* v. *Williams*, L. R. 3 C. P. D. 382 (referred to in note to section 6 of 18 & 19 Vict. c. 120, *ante*), the court expressed the opinion that the decision of the inspectors that a person was duly qualified and elected was not conclusive.

Section 36. to agree upon or determine by a majority any matter which they are by the said Act required to determine such matter shall be decided by the said umpire, and his decision in relation thereto shall be final and conclusive.

Vestries and district boards may appoint their days of meeting.

37. Every vestry and district board (*a*) constituted under the firstly-recited Act, or this Act, may hold their meetings on such days of the week, except Sundays, as they may from time to time determine, notwithstanding any provision to the contrary contained in any local Act; and any business which, by any local or other Act of parliament, or custom, should be done by any such vestry on a certain day, may be done at any meeting of such vestry duly convened for the purpose, and held within seven days next before or after such certain day as aforesaid: provided that where the hour or time for holding such meetings is fixed by the local Act they shall continue to be held at the same hour or time.

Certiorari for auditors' allowances or disallowances.

38. Notwithstanding anything in the one hundred and ninety-fifth section of the firstly-recited Act contained to the contrary, if any person aggrieved by any allowance, disallowance, or surcharge by any auditors of the accounts of any vestry or district board require such auditors to state the reasons for the said allowance, disallowance, or surcharge, the auditors shall state such reasons in writing in the book of account in which the allowance, disallowance, or surcharge may be made (*b*); and it shall be lawful for every person aggrieved by such allowance, disallowance, or surcharge to apply to the court of Queen's Bench (*c*) for a writ of *certiorari* to remove into the said court the said allowance, disallowance, or surcharge, in the like maner and subject to the like conditions as are provided in respect of persons suing forth writs of *certiorari* for the removal of orders of justices of the peace, except that the condition or the recognizance shall be to prosecute such *certiorari* at the costs and charges of such person, without any wilful or affected delay, and if such allowance, disallowance, or surcharge be confirmed, to pay such auditors or their successors, within one month after the same may be confirmed, their full costs and charges, to be taxed according to the course of the said court, and except that the notice of the intended application, which shall contain a state-

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(*a*) The 39th section of 18 & 19 Vict. c. 120, enables district boards to appoint the time and place of their ordinary meetings. The effect of this provision seems to be to enable vestries to hold their ordinary meetings on any day except Sunday; but in the case of business appointed to be done on particular days, that may be done on any day falling within the period. here defined, but at the same hour as is now fixed by the local Act.

(*b*) See *certiorari* to remove auditor's disallowance of overseer's accounts, and what grounds for disallowance insufficient; *Reg.* v. *Street*, 16 Jur. 1085, and note to section 192 of 18 & 19 Vict. c. 120.

Where a poor law auditor certified under section 32 of 7 & 8 Vict. c. 101, that a sum of money was due from an overseer, and in a proceeding before justices to recover the amount, the defendant pleaded his discharge under an adjudication in bankruptcy, it was held that the debt was extinguished by the bankruptcy, and the justices had no jurisdiction to commit under section 99; *R.* v. *Masters*, 38 L. J. M. C. 73. See rule absolute to quash the disallowance by a poor law auditor of a sum necessarily incurred for the services of extra clerks in the preparation of a new valuation and charged with the consent of the vestry to the poor rate; *R.* v. *Overseers of Medlock*, 40 J. P. 531.

(*c*) Now the Queen's Bench Division of the High Court of Justice.

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ment of the matter complained of, shall be given to such auditors or their successors, who shall in return to such writ return a copy under the hands of a majority of them of the entry or entries in such book of account to which such notice shall refer, and shall appear before the said court, and defend the allowance, disallowance, or surcharge so impeached in the said court, and shall be reimbursed all such costs and charges as they may incur in such defence out of the funds of the vestry or district board respectively interested in the decision of the question, unless the said court make any order to the contrary; and on the removal of such allowance, disallowance, or surcharge the said court shall decide the particular matter of complaint set forth in such statement and no other; and if it appear to such court that the decision of the said auditors was erroneous, they shall, by rule of the court, order such sum of money as may have been improperly allowed, disallowed, or surcharged to be paid to the party entitled thereto by the party who ought to repay or discharge the same, and they may also, if they see fit, by rule of the court, order the costs of the person prosecuting such *certiorari* to be paid by the vestry or district board to which such accounts relate, as to such court may seem fit, which rules of court respectively shall be enforced in like manner as other rules of the said court are enforceable (*d*).

Provision in case of a vestryman being returned for more than one ward.

39. If any person be returned to serve in any vestry for more than one ward, he shall on or before the next meeting of the vestry after such election signify in writing to the clerk of such vestry his decision as to the ward which he may desire to represent on such return; and if before or at such meeting he shall refuse or neglect so to do, the vestry shall determine the ward which he shall represent; and the vacancy occasioned by such determination or decision shall be filled up by an election to be held for that purpose within one month from the date of such determination or decision, such election to be conducted in the like manner as the annual elections of vestrymen.

Elections to be held annually for supplying vacancies occasioned

40. The thirty-fifth section of the recited Act of the eighteenth and nineteenth Victoria is hereby repealed; and in lieu thereof be it enacted, That the vestry constituted by the said Act in every parish mentioned in the second column of schedule (B.) to the same Act shall, on the first Wednesday in the month of June in the year 1863, and in every subsequent year, elect so many persons (*e*) qualified by

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(*d*) The effect of this provision is to repeal that part of the 195th section of 18 & 19 Vict. c. 120, which enacts that the allowance of the auditors shall be final and conclusive. See that section, p. 154 and notes, *ante*, which does not contain any provision for recovering surcharges. The certificate of the auditor as to the accuracy of a surcharge can only be disputed on appeal to the Court of Queen's Bench under the statute, and the justices can only issue their warrant when it is sufficiently proved that it is their duty to issue it in accordance with the information; *R.* v. *Fordham*, L. R. 8 Q. B. 501. For decisions on the auditing of poor rates, see *Reg.* v. *Greene*, 21 L. J. M. C. 137; *Reg.* v. *Great Western Railway Company*, 13 Q. B. 327; *Reg.* v. *Read*, 13 Q. B. 524; *R.* v. *Winsford*, 13 Q. B. 873. As to finality of certificate of auditor, see *R.* v. *Linford*, 7 E. & B. 950; *R.* v. *Finnis*, 28 L. J. M. C. 201. It was decided in *Barton* v. *Pigott*, L. R. 10 Q. B. 86, that an order of justices allowing items made illegal under section 46 of the General Highway Act, 5 & 6 Will. 4, c. 50, was bad under section 44.

(*e*) The 35th section requires the persons elected to supply vacancies to be "vestrymen" of the parish. This enables others than vestrymen to be

Section 40. by expiration of term of office.

rating and occupation, as required by the same Act and the recited Act of the nineteenth and twentieth Victoria to be elected vestrymen of such parish, to be members of the board for the district in which such parish is comprised, as may be necessary for supplying the vacancies among the members of such board elected for such parish occasioned by expiration of the term of office of the members going out of office at the time of such election.

As to division into wards when parish contains two thousand houses (*a*).

41. When at any time, upon any account taken of the population by the authority of parliament, any of the parishes within the metropolis not now divided into wards for the purpose of electing vestrymen shall be found to contain more than two thousand rated householders, it shall be lawful for the metropolitan board of works, upon the application in writing of the vestry, or of not less than five hundred rated householders of the parish, to divide such parish into wards, and to determine and set out the number, extent, limits, and boundary lines of such wards, but so nevertheless that no ward shall contain less than five hundred rated householders, and that the whole number of wards shall not exceed eight; and the metropolitan board shall apportion among the several wards the number of vestrymen to be elected for such parish, and shall, in assigning the number of vestrymen to each ward, have regard, as far as in their judgment is practicable, as well to the number of persons rated to the relief of the poor in each ward as to the aggregate amount of the sums at which all such persons are rated; and the number of vestrymen assigned to each ward shall be a number divisable by three, and a copy of the particulars of such division and apportionment shall be forthwith transmitted to one of Her Majesty's principal secretaries of state for his approval, and also to the vestry clerk of the parish to which such division and apportionment relate; and the said particulars shall, within seven days after such transmission, be published by the said board in the London Gazette; and at the expiration of not less than two calendar months the said secretary of state shall, if he approve of the same, publish the said particulars again with his approval affixed thereto in the London Gazette; but if the said secretary of state disapprove of the proposed division into wards or apportionment of vestrymen, then he shall, subject, however, to all the above limitations, make such other division or apportionment as in his judgment shall be more conducive to a fair representation in the vestry of the interests of the ratepayers of the said parish, and shall publish the particulars of such fairer division and apportionment in the London Gazette, and the parish shall, after such publication by him in the London Gazette, be deemed to be divided into such wards so determined and set out.

No parish shall be

42. No representation shall be made under the two hundred and forty-ninth section of the firstly-recited Act, unless and until the

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elected, provided they be qualified by rating and occupation, as required by section 6 of 18 & 19 Vict. c. 120.

(*a*) The 3rd section of 18 & 19 Vict. c. 120, *ante*, limited the division into wards to be made under that Act to parishes containing more than two thousand rated householders at the the time of the passing of that Act. This enactment provides for the division of a parish into wards where the population has increased since the passing of that Act so as to exceed that limit. The duties entrusted to the metropolitan board by this provision are similar to those imposed upon the persons appointed by the secretary of state under section 4 of the 18 & 19 Vict. c. 120, *ante*.

Section 42.

annexed without previous notice.

metropolitan board of works shall have given to the churchwardens and surveyors of highways of the parish to which such representation relates two months' notice in writing (*b*) under their common seal of their intention to make such representation and of the provisions which it is intended to propose in such representation; and the said churchwardens and surveyors of highways shall, immediately after receiving such notice as aforesaid, summon a vestry meeting of the parish, and submit such notice to the consideration of the said meeting; and such representation of the said metropolitan board shall be accompanied by a copy of all resolutions or statements that may have been made to the said board in writing by the said churchwardens and surveyors of highways, or either of them, by direction of such vestry meeting.

Annual report of officer of health.

43. The officer or officers of health for each parish or district shall make an annual report (*c*) to the vestry or district board of the sanitary condition of the parish or district, and upon the other matters set forth in the one hundred and thirty-second section of the firstly-recited Act, and it shall not be necessary to append to the annual report of the vestry or district board, to be made in the month of June in each year, a copy of any other report of such officer or officers than such annual report.

Owners and occupiers of land may execute works of drainage at their own expense (*d*).

44. It shall be lawful for the owners or occupiers of any land or premises in any parish, district, or part within the limits of the metropolis as defined by the firstly-recited Act, with the consent and subject to the regulations and conditions hereinafter mentioned, to construct sewers at their own expense for the purpose of draining such land or premises; and it shall be lawful for any vestry or district board in whom the sewers in any parish, district, or part are vested, if they shall deem it just and proper so to do, to contribute out of the rates under their control applicable to the execution of works of sewerage to the cost of any sewers constructed for the purpose aforesaid.

(*b*) The two months' notice to the churchwardens and surveyors directed by this section is in addition to the one month's notice required by the 249th section of 18 & 19 Vict. c. 120, to be published in the London Gazette.

(*c*) The 198th section of 18 & 19 Vict. c. 120, directs that vestries and district boards shall append to the annual report of their proceedings, which they are required to send to the Metropolitan Board of Works, a copy of every report which may have been made to them by their medical officers in the course of the past year.

(*d*) See *Fulham District Board of Works* v. *Goodwin*, cited section 54, *post*. Under 18 & 19 Vict. 120, a vestry or district board had no power to call on a party to construct a sewer for the drainage of streets or house property. See *Clarke* v. *Vestry of Paddington*, 5 Jur. (N.S.) 138. The absence of any positive provision in the Metropolis Local Management Act, 1855, for compelling the construction of sewers by private parties where land has been newly let for building operations, induced some persons to believe that vestries and district boards were compellable by *mandamus* to construct sewers in private streets and roads, and proceedings have in some instances been taken to compel them to do so. See *Reg.* v. *Vestry of St. Luke, Chelsea*, 31 L. J. Q. B. 50; *ex parte Cramp* and *ex parte Parsons*, 22 J. P. 68. The power here given to vestries and district boards to contribute to the cost out of the public rates, where the work may benefit a larger district, is a useful one.

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Vestries, &c., to submit plans of new sewers to metropolitan board (*a*).

45. Any vestry or district board intending to construct any sewer shall, before commencing any works for that purpose, submit to the metropolitan board of works a plan of the street or place in which it is proposed to construct such sewer, drawn to such a convenient scale or scales as the said metropolitan board shall direct, and there shall be shown on such plan the position, course, and dimensions of the proposed sewer, with a section or sections thereof, and such other particulars in relation thereto as the said metropolitan board shall deem necessary and require, and no such sewer or works shall be proceeded with without the approval in writing or contrary to the direction of the said board.

Communications with main sewers.

46. Three clear days' notice in writing shall be given to the metropolitan board of works by any vestry or district board previously to the connexion of any sewer or drain with a main sewer; and the necessary junction or communication for that purpose shall be made by such vestry or district board to the satisfaction of the said metropolitan board.

Private parties before branching sewers into main or district sewers to apply for sanction of vestries, &c.

47. Every person other than a vestry or district board intending to make or branch a sewer, either into a sewer vested in the metropolitan board of works, or into a sewer vested in any vestry or district board, shall in the first instance lay the plan and section thereof before, and apply for the sanction of, the vestry or district board of the parish, district, or part in which such last-mentioned sewers shall be situate; and no sewer shall be begun to be made by such person until the sanction in writing of such vestry or district board shall have been obtained.

Vestries, &c. before sanctioning sewers, to apply for approval of metropolitan board.

48. Before any vestry or district board shall sanction the construction of any such sewer they shall submit the plan and section thereof to the metropolitan board of works for their approval, in the same manner as if such sewer were proposed to be constructed by such vestry or district board; and no vestry or district board shall sanction the construction of any such sewer without the approval in writing of the said metropolitan board first had and obtained.

Seven days notice must be given before drains can be branched into main sewers.

49. All persons intending to make or branch any drain into a sewer vested in the metropolitan board of works shall, seven clear days before commencing any works for that purpose, make written application to the vestry or board of the parish, district or part in which such sewer shall be situate, accompanied by a plan showing such particulars as may be required by any bye-law or resolution of the

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(*a*) The clauses from 45 to 51 inclusive embody regulations for the construction of sewers, and ensure the submission of proper plans and particulars before the work can be sanctioned. They also effect a division of labour between the metropolitan and local boards, by which all applications from private parties first come before the latter, and they then communicate with the metropolitan board. These regulations are intended to render that provision of the 69th section of 18 & 19 Vict. c. 120, effectual, by which the making of new sewers is prohibited without the previous approval of the metropolitan board. There is an early precedent for regulations of this nature in 47 Geo. 3, c. 7, an Act relating to the Westminster commission, by which, previous to the construction of any new sewer intended to communicate with the sewers of the commissioners, notice to those commissioners was necessary, and such sewer was required to be made according to their direction.

said metropolitan board; and no such work shall be commenced until the sanction in writing of the said vestry or district board shall have been given.

Regulations as to abandonment, alteration, &c., of designs for sewers previously approved.

50. When it shall be desired to abandon either wholly or in part, or to extend, contract, or alter any design for a sewer previously submitted to and approved by the metropolitan board of works, notice in writing of such desire shall be given by the vestry or district board by whom such approval shall have been obtained to the said metropolitan board, accompanied by plans and sections showing the nature of the abandonment, extension, contraction, or alteration desired; and no such abandonment, extension, contraction, or alteration shall be made without the previous approval in writing of the said metropolitan board; and no person other than a vestry or district board shall abandon wholly or in part, or extend, contract, or alter in construction, any sewer approved or sanctioned by the metropolitan board of works, without the previous sanction in writing of the vestry or district board in whose parish or district the works were intended to be executed, to be applied for and given in the same manner as hereinbefore directed with respect to new sewers.

In case sewer be not constructed within 12 months, fresh application to be made (*b*).

51. In case any sewer sanctioned and approved by the metropolitan board of works as hereinbefore provided shall not be constructed or executed within twelve calendar months from the date of such sanction or approval, the works for the construction of such sewer shall not be executed without a fresh permission by the metropolitan board, and their written sanction that the necessary works for the construction of such sewer may proceed, to be applied for and obtained in manner hereinbefore provided with respect to the original permission for the construction of such sewer.

Expense of constructing sewers in new streets and streets laid out since 1st Jan., 1856 (*c*).

52. Where any sewer shall, after the passing of this Act, be constructed by any vestry or district board in or for the drainage of any new street (*d*), or of any house or houses erected since the 1st day of January, 1856, the expense of constructing such sewer and the works appertaining thereto, including the cost of gullies, side entrances, lengths of sewer at the intersection of streets, and other incidental charges and expenses shall be borne and defrayed by the owners (*e*) of such street or houses, and of the land bounding or abutting on such street respectively, and the said expenses shall be apportioned by the vestry or district board in such proportion as they may deem just, and the amount charged upon or payable in respect of each

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(*b*) There was a bye-law of the Westminster commission which contained a similar provision.

(*c*) See as to charging a portion of the expenses of arching sewers on occupiers of adjoining lands in the repealed statute relating to the Surrey and Kent sewers commission, 10 & 11 Vict. c. 217; analogous provisions in the repealed statute relating to the Westminster commission, 10 & 11 Vict. c. 70; and the powers of the commissioners under the Metropolitan Sewers Act, 11 & 12 Vict. c. 112, for compelling sewers constructed to be continued, and as to special rates, contributions, &c.

(*d*) See definition of the expression "new street," section 112.

(*e*) See definition of word "owner" in section 250 of 18 & 19 Vict. c. 120, *ante*, with which this Act is to be read as one Act; section 110, *post*; and decisions cited in Metropolis Management Act, 1865, section 105, *ante*, and section 77 of this Act as to who are "owners" within the enactments relating to *paving* new streets.

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house or premises shall be payable before the works shall be commenced, during their progress, or after their completion (*a*) as the vestry or district board shall in each case determine, either in one sum or by instalments, within such period not exceeding twenty years, as the vestry or district board shall direct; and any such sum or instalments shall be recoverable from the present or any future owner of the said house or premises either by action at law or in a summary manner before a justice of the peace at the option of the vestry or board (*b*).

Expense of constructing sewers where there had before been only open sewers.

53. Where any sewer shall be constructed by any vestry or district board in a street (*c*) in which previously to such construction there had been no sewer, or only an open sewer, but where sewers rates have been levied previously to such construction, the expense of constructing such sewer and the works apertaining thereto, including the cost of gullies, side entrances, lengths of sewer at the intersection of streets, and other incidental charges and expenses, shall be borne and defrayed in part only by the owners of the houses situated in and of the land bounding and abutting on such street respectively; and the amount to be borne by such owners shall be determined by the vestry or district board in each particular case, and the residue of such expenses shall be defrayed by the vestry or district board out of the sewers rates levied in their parish or district; and the amount so charged by the vestry or district board upon or

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(*a*) See a similar provision as to the expenses of paving new street, section 77.

(*b*) Where, under the Local Government Act, a local board had the, option of recovering the expenses of paving and sewering a new street either in the county court or by a summary proceeding, the limitation of six months within Jervis' Act was held to apply to both proceedings; *Tottenham Local Board of Health* v. *Rowell*, L. R. 1 Ex. D. (C.A.) 514; see also *West Ham Local Board of Health* v. *Maddams*, 40 J. P. 470.

(*c*) It was held in *Vestry of St. Giles, Camberwell* v. *Weller*, 17 W. R. 973, that where sewers rates had been charged previous to the construction of a sewer, the whole expense must not be charged on the owners, because the word "street" in the 53rd section applies to any street, whether new or old, in which sewers rates have been levied; but this case was overruled in *Sawyer* v. *Paddington Vestry*, 40 L. J. M. C. 8, where it was held that the word "street" in this section does not apply to a "new street" within section 52. Where a new sewer was constructed in a new street, and sewers, rates had been levied there previously to such construction, an apportionment imposing no portion of the cost on the sewers rate is bad; *Sheffield* v. *Fulham District Board of Works*, L. R. 1 Ex. D. (C.A.) 395, where it was said by the court that section 52 did not apply, and even if it did the assessment would appear to be bad, for omitting to impose any part of the cost on the owners of the building land abutting on the ends of the street.

Where the respondent had constructed a sewer in a new street with the sanction of the Metropolitan Board of Works, and the appellants took it up and laid down a new sewer: Held the respondent was not liable to pay any part of the cost; *Fulham District Board of Works* v. *Goodwin*, L. R. 1 Ex. D. (C. A.) 400; 41 J. P. 139.

There is no limit of time for making the apportionment upon the owners; *Bradley* v. *Greenwich Board of Works*, L. R. W. N., 1878, p. 123; L. R. 3 Q. B. D. 384. The six months limit of time for proceedings under Local Government Act, 1858, and Public Health Act, 1848, for recovery of expenses of sewerage, &c., runs from notice of demand, and not from notice of apportionment; *Grece* v. *Hunt*, L. R. 2 Q. B. D. 389.

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in respect of each house or premises shall be payable, either before the works shall be commenced, during their progress, or after their completion, as the vestry or board shall in each case determine, either in one sum or by instalments within such period, not exceeding twenty years, as the vestry or board shall direct; and any such sum or instalment shall be recoverable from the present or any future owner of such house or premises either by action at law or in a summary manner before a justice of the peace, at the option of the vestry or board: Provided that no street or property in respect of which sewers rates have been levied for five years prior to the 1st day of January, 1856, shall be subject to be charged under the provision contained in this section.

Land may be charged in a less proportion than house property.

54. In apportioning the cost of constructing sewers under the provisions contained in the two last preceding sections of this Act relating to the construction of sewers wholly or partly at the cost of private parties, it shall be lawful for any vestry or district board to charge the owners of land bounding or abutting on any street in a less proportion than the owners of house property, should they, under the circumstances of the case, deem it just and expedient so to do.

Where estimated expenses exceed actual cost, difference to be refunded by, and where less to be paid to, vestry, &c. (*d*).

55. In any case in which the estimated expenses shall exceed the actual cost of constructing sewers under the provisions contained in the said two preceding sections of this Act relating to the construction of sewers wholly or partly at the cost of private parties, then the difference between such estimated expenses and the actual cost shall be repaid by the vestry or board to the owners of the houses or premises by whom the amount of any such estimated expenses may have been paid; and in any case in which the estimated expenses shall be less than the actual cost of constructing any sewer or sewers under the provisions aforesaid, then the owners of the said houses or premises shall, on demand, pay to the said vestry or board such further sum of money as, together with any sums already paid, will make up the amount of the actual cost; and the vestry or district board shall have all the same remedies for the recovery of such further sum as are hereinafter given for recovering any expenses apportioned by vestries or district boards under the said enactments.

Vestry or district board may defray part of expense out of sewer rates (*e*).

56. It shall be lawful for the vestry or district board, should they deem it reasonable and just so to do, at their discretion to defray, out of the sewers rates to be levied in their parish or district, any portion of the expenses of and incident to the construction of sewers under the provisions contained in the said two sections of this Act relating to the construction of sewers wholly or partly at the cost of private parties.

Appeal against orders of vestries,

57. Any person who may deem himself aggrieved by any order or resolution of any vestry or district board in relation to the expenses of constructing works under the said two sections of this Act relating

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(*d*) The provision for repayment of the difference is similar to that contained in the 105th section of 18 & 19 Vict. c. 120, *ante*, with respect to the expenses of paving new streets.

(*e*) The 86th section of 18 & 19 Vict. c. 120, enables vestries, &c., to defray the whole or a portion of the costs of constructing sewers, &c., for the abatement of nuisances, after default by private parties.

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&c., as to amount or apportionment of expenses (*a*).

to the construction of sewers wholly or partly at the cost of private parties, or the apportionment of such expenses, may appeal to the metropolitan board of works against such order or resolution, subject in all respects to the directions and provisions contained in the 211th section of the firstly-recited Act, and the section of this Act relative to the form of order to be made by the committee of appeal of the metropolitan board of works against orders or acts of vestries or district boards.

Execution of works of sewerage by vestries and district boards beyond the limits of the metropolis (*b*).

58. Whereas the vestries of the parishes mentioned in schedule (A.) of the firstly-recited Act and district boards are, by the 69th section of the said Act, subject to the powers vested in the metropolitan board of works, empowered to make, repair, and maintain sewers vested in them, and to do and perform other works and matters as in the said section is mentioned, and it is expedient to give increased facilities to such vestries and district boards for the execution and performance of such works and matters: Be it therefore enacted, that whenever it shall be found necessary by the vestry of any parish mentioned in schedule (A.) to the said Act, or by the board of works of any district mentioned in schedule (B.) to the said Act, for the purpose of executing works for any of the purposes mentioned in the said section, to carry any sewer or works within the limits of the metropolis as defined by the said Act, it shall be lawful for any such vestry or district board to execute works in parts situate beyond or without such limits, and to cleanse, repair, and maintain such works as they shall from time to time deem necessary: Provided always: that no work shall be performed or commenced by any vestry or district board beyond the limits of the metropolis as above defined, except for the purpose of continuing or forming part of a work commenced or executed within their respective parish or district; nor shall any such works be performed or commenced without the consent in writing of the metropolitan board of works for that purpose first had and obtained, nor without the consent of the vestry or district board, or authorities of the parish or place through which the work may pass; but if any such vestry or district board or authority shall refuse such consent, one of Her Majesty's chief secretaries

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(*a*) The sewers themselves must have been previously sanctioned by the metropolitan board, under section 69 of 18 & 19 Vict. c. 120, and 45th and following sections of this Act, and the appeal is limited to the amount of the expenses.

(*b*) There are certain parishes near the central boundary of the metropolis which, owing to the fall of the ground, can only be drained by means of outfalls traversing districts situate beyond the metropolitan limits, and much inconvenience has been occasioned by the want of a power similar to that conferred by the present section. The power to carry sewers through lands, *as well beyond as within* the limits of the metropolis, is given by the 135th section of 18 & 19 Vict. c. 120, to the metropolitan board alone; the words "beyond the limits," being omitted from the 69th section, defining the powers of the latter for the execution of works. It has been held under the Public Health Act, 11 & 12 Vict. c. 63, that the power of local boards to construct sewers is confined to their own limits, and that the 30th section of the Local Government Act, 21 & 22 Vict. c. 98, only enables those boards to go beyond their own district when it is necessary to do so for the purpose of outfall or the distribution of sewage; *Hayward* v. *Lowndes*, 28 L. J. Ch. 400. See reference to Acts containing powers for the drainage of certain parishes and places not within the metropolitan area in note to section 135 of 18 & 19 Vict. c. 120, *ante*.

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of state shall have authority under this Act to decide whether such consent ought to be withheld, and such secretary of state may make such order as to him shall seem just; but nothing herein contained shall apply to any work for the purpose of the main drainage of the metropolis under the recited Acts: Provided also, that no new sewer either within or beyond the limits of the metropolis shall be made or executed by any vestry, district board, or other body (*c*) having control over sewers within the metropolis without the previous approval of the said metropolitan board.

Contribution to cost of main sewers and sewers built since 1st January, 1853, or hereafter to be built (*d*).

59. The provisions contained in the eightieth section of the firstly-recited Act, empowering vestries and district boards to order, at their discretion, under the circumstances therein mentioned, such sums as they shall deem just to be paid and contributed by the owners of houses towards the expense of the construction of sewers into which drains from such houses shall be made or branched, shall be extended, and the same are hereby extended and made applicable to the metropolitan board of works with respect to houses draining into main sewers constructed at the expense of any person or body other than any commissioners of sewers, and which are vested in the metropolitan board; and the same provisions are hereby extended and made applicable to all sewers within the limits of the metropolis as defined by the firstly-recited Act, built since the 1st day of January, 1856, or which may hereafter be built at the expense of any person or body other than the metropolitan board of works, or any vestry, district board, or other body having control over sewers within the metropolis, into which house drains may be made or branched; and the said metropolitan board, vestry, district board, or other body, as the case may be, may at their discretion accept payment of contribution from the owners of houses draining into such sewers respectively, either in one sum or by instalments within any period not exceeding twenty years, with interest after a rate not exceeding £5 by the hundred by the year, as the said board, vestry, or other body shall in each case determine, and shall on receipt of any such contribution or instalment pay over the same to the person or body entitled thereto; and every sum payable to the said board, vestry, or other body by way of contribution to the construction of sewers shall be recoverable from the present or any future owner of the said premises either by action at law or before a justice of the peace in a summary manner, at the option of the board or vestry: Provided that nothing herein contained shall prejudice or affect the right of vestries and district boards to demand and recover from the owners of houses and land the sums charged upon them

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(*c*) This provision goes beyond the 18 & 19 Vict. c. 120, which applies to the works of vestries and district boards only. The words here used are apparently large enough to include the commissioners of sewers for the city of London.

(*d*) This is an extension of the provisions contained in the 80th section of 18 & 19 Vict. c. 120, by which the liability to pay contribution to the cost of the construction of sewers is limited to the case of sewers as built previously to the passing of the Act, and to sewers vested in vestries and district boards, but built at the expense of private individuals. The section as here framed, authorizes contribution to the cost of main sewers which have been built at the expense of private parties, and of sewers of every description built since the 1st of January, 1856, or which may hereafter be built at the cost of private parties.

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Where time is given for payment of contribution, the metropolitan board shall keep a register.

60. In all cases in which time shall be given by the metropolitan board of works, or by any vestry, district board, or other body, for the payment of any contribution to the cost of a sewer as aforesaid, the metropolitan board of works shall keep a register of all such orders for contribution, which register shall contain the description of the premises, the amounts payable, the periods for payment, and other necessary particulars; and such register shall be open to inspection by parties interested during office hours without payment of fee or reward; and every vestry, district board, or other body giving time for payment of any such contribution as aforesaid shall forthwith transmit to the said metropolitan board a copy of their order or resolution in that behalf made, and such other particulars in relation thereto as the said board may deem necessary and require.

Regulations respecting openings into sewers (*b*).

61. The seventy-seventh section of the firstly recited Act is hereby repealed; and in lieu thereof be it enacted, that no person shall make or branch any sewer or drain, or make any opening into any sewer vested in the metropolitan board of works, or in any vestry or district board, without the previous consent in writing of such board or vestry: Provided that it shall be lawful for any person, with such consent, at his own expense, to make or branch any drain into any sewer vested in such board or vestry, or authorized to be made by them or either of them under the firstly-recited Act or this Act, such drain being of such size, materials, and other conditions, and branched into such sewer in such manner and form of communication in all respects, as the board or vestry shall direct or appoint (*c*): provided also, that where any contribution to the cost of a sewer is payable in respect of drainage into the same, it shall not be lawful for any person to make or branch any drain into such sewer, except in conformity with the directions of the board or vestry in whom the same shall be vested with respect to payment of contribution under the provisions, contained in the firstly-recited Act and this Act in that behalf (*d*);

(*a*) This refers to the cost of constructing sewers in new streets, &c., under sections 52 and 53.

(*b*) The section as now re-enacted, imposes the condition of a previous application to and written consent by the respective bodies in whom the sewers are vested, and in general gives more efficient control over the execution of the works. It also provides for payment of contribution, and, in addition to the penalties incurred by any infraction of its provisions, the wrongful drainage may be cut off.

Where a statutory obligation is imposed upon a person, he is liable for any expense in consequence of its having been negligently performed, and this whether it was performed by a contractor engaged by him or by himself. And where A. employed a contractor to lay a drain from his premises to a sewer, through whose negligence damage occurred, Held by the Ex. Ch., reversing the decision of the Q. B., that A. was responsible in an action by the party injured; *Gray* v. *Pullen*, 5 B. & S. 970; and see *Hole* v. *Sittingbourne Railway Co.* 6 H. & N. 488; and *Pickard* v. *Smith*, 10 C. B. (N.S.) 470, as to employers being held responsible for injuries caused by persons employed by them.

(*c*) As to the discretion of the board or vestry with respect to the materials to be used, see *Austin* v. *St. Mary, Lambeth*, 27 L. J. Ch. 677, cited in note (*c*) to section 76, 18 & 19 Vict. c. 120, *ante*.

(*d*) See section 80 of 18 & 19 Vict. c. 120, *ante*, and section 59 of this Act.

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and in case any person, without the consent of the said metropolitan board, district board, or vestry as aforesaid, make or branch, or cause to be made or branched any sewer or drain, or make any opening into any of the sewers vested in any such board or vestry, or authorized to be made by them as aforesaid, or if any person make or branch, or cause to be made or branched, any drain of a different construction, size, material, or other conditions, or in another manner or form of communication than shall be directed or appointed by such board or vestry, every person so offending shall for every such offence forfeit a sum not exceeding £50; and the board or vestry may cut off the connexion between such drain and their sewer, or if they shall see fit execute the necessary works for making the said drain conformable to their regulations or directions at the expense of the person making such drain or causing the same to be made, such expenses to be recovered either by action at law or in a summary manner before a justice of the peace, at the option of the board or vestry.

Reports as to underground rooms occupied as dwellings.

62. Every district surveyor required to report by the one hundred and third section of the firstly-recited Act, shall, without fee or reward, report to the metropolitan board, and to every vestry and district board in the district in which such surveyor may act, in the months of June and December in each year, and at all other times when he shall be required so to do by any such board or vestry, all underground rooms or cellars occupied as dwellings within the meaning of the first-recited Act that are not built or constructed in conformity with the rules contained in the said section, and shall in such report set forth the exact locality in which such underground rooms or cellars are situate; and in any proceedings taken to recover the penalty under the said one hundred and third section of the said Act, such evidence as may give rise to a probable presumption (*e*) that some person passes the night in such room or cellar shall be evidence, until the contrary be made to appear, that such has been the case.

Extension of time under section 76 of 18 & 19 Vict. c. 120, for making orders by vestries and district boards.

63. Whereas by the seventy-sixth section of the firstly-recited Act, it is provided that the vestry or district board shall make their order in relation to the matters therein referred to, and cause the same to be notified to the person from whom the notice mentioned in the said section was received within seven days after the receipt of such notice, and it is expedient that the time for making such order should be extended: Be it therefore enacted, that where any notice shall have been given to any vestry or district board pursuant to the said section, it shall be lawful for the surveyor of such vestry or board, if he shall deem it necessary and proper so to do, within three days after the receipt of such notice by the vestry or district board, by writing under his hand directed to and served upon the person giving such notice, to require that the buildings or works referred to therein shall not be proceeded with until after the then next meeting of the said vestry or district board, and until their directions in reference thereto shall have been notified to such person, provided that the order of the said vestry or district board shall be made and notified to the said person at the latest within fifteen days after the receipt of such notice by the vestry or district board; and in case any person shall proceed with

(*e*) It would seem that the evidence raising *probable presumption* must be such as would constitute *reasonable grounds* within section 104 of 18 & 19 Vict. c. 120, *ante*.

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any building or works contrary to this enactment he shall forfeit and pay to the vestry or district board a sum not exceeding £5, and also a further sum of 40s. for every day during which such offence shall continue, to be recovered by action at law or in a summary manner at the option of the vestry or board.

Where parties neglect to carry out works pursuant to order of vestry, the vestry may recover penalty or do the works (*a*).

64. Whereas by the seventy-third, seventy-fourth, seventy-sixth eighty-first, eighty-fifth, and eighty-sixth sections of the firstly-recited Act, certain works, matters, and things are required to be constructed, made, or executed on the requisition of vestries and district boards by the owners or occupiers of the premises therein referred to; and in case any such owner or occupier refuse or neglect to commence, proceed with, or complete the same, as the case may be, the vestry or district board are authorized to perform and execute such works, matters, and things, and recover the costs incurred thereby in manner therein provided: Be it enacted, that in case of any such neglect or default by any person or persons to comply with the order of any vestry or district board to execute any works, matters, or things under any of the said provisions, the person or persons so offending shall forfeit and pay to the vestry or district board a sum not exceeding £5, and also a further sum not exceeding 40s. for every day during which such offence shall continue, to be recovered by action at law or before a justice of the peace in a summary manner, at the option of the vestry or district board; and the vestry or district board may at their discretion either execute or perform any such works, matters, or things, and recover the costs and expenses thereof from the owner of the property as aforesaid, or proceed for and recover the said penalty or penalties; but nothing herein contained shall render any person or persons liable to be proceeded against for the penalty as well as for the costs and expenses of the works.

Penalties in 18 & 19 Vict. c. 120, extended to persons causing offences (*b*).

65. The penalties declared by the firstly-recited Act in the case of persons committing the offences mentioned therein are hereby extended and made applicable to all persons causing the commission of any such offences, or by whose order or direction any such offences shall have been committed.

Temporary provision for drainage of property where no proper sewer within 200 feet (*c*).

66. Whereas certain property within the limits of the metropolis is so situate as to render it impracticable, or practicable only at undue expense, to connect such property with covered sewers, and it is expedient that some temporary provision should be made for draining such property and abating the nuisances existing thereon or caused thereby: Be it therefore enacted, that in any case in which any house or other building, whether erected before or after the passing of this Act, is without sufficient drainage, and there is no proper sewer within two

(*a*) Under the provisions referred to relating to the branching of drains into sewers, the laying on water, the levels of buildings, the construction of house drains, waterclosets, and ashpits, the filling up of ponds, open ditches, &c., vestries and district boards, in case of default by private parties in complying with these orders, could only execute the works themselves, and proceed against the parties liable to recover the expenses. This enactment gives them the option of doing the works, or proceeding for penalties, and under the latter alternative it gives them the protection of a magistrate's order.

(*b*) Refer to Jervis' Act, 11 & 12 Vict. c. 43, s. 5, as to conviction of every person who shall aid, abet, counsel, or procure the commission of any offence which is or hereafter shall be punishable on summary conviction.

(*c*) The power given by the 75th section of 18 & 19 Vict. c. 120, calling

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hundred feet of any part of such house or building, it shall be lawful for the vestry or district board of the parish or district in which such house or building is situate by notice in writing to require the owner of such house or building to construct and lay from such house or building a covered drain to lead therefrom into a covered watertight cesspool or tank or other suitable receptacle, not being under a house or within such distance from a house as the vestry or board shall direct, and to construct such cesspool, tank, or receptacle; and the several provisions (*d*) in the firstly recited Act with respect to the laying of house drains at the expense of the owners of property, and the recovery of such expenses of and the penalties for any omission in respect to the performance of any such works pursuant to the orders of vestries or district boards in accordance with the directions of the said Act, shall be extended to and apply to the making of such cesspools, tanks, receptacles, and drains, and the orders of vestries and district boards in relation thereto and the expenses thereof.

Vestries, &c., may compel supply of water for houses.

67. If it shall appear to any vestry or district board that any house within their respective parishes or districts is without a proper supply of water, and that such supply can be furnished to such house at a rate not exceeding 3*d.* per week, conformably with the scale of rates authorized to be charged by any water company within the metropolis as defined by the firstly-recited Act, the said vestry or district board may give notice in writing to the owner or occupier of such house, requiring him, within a time specified therein, to obtain such supply, and to do all such works as may be necessary for that purpose; and if such notice be not complied with, the said vestry or district board shall do such works and recover the expenses thereof from the owner of the premises as hereinafter provided; and any water company shall, upon the requisition of such vestry or board, supply with water such house, and the rates for the supply of such house or houses as aforesaid shall be due and payable by the said owner, and shall be recovered by the company as if such owner had contracted with the company for the supply of such water.

In any case where it shall appear to any vestry or district board that the existing supply of water to any house within their respective parishes or districts would be sufficient for such house if the same were inhabited by a lesser number of persons, but is insufficient by reason that the same is inhabited by numerous persons (being more than one single family), it shall be lawful for such vestry or district board to give notice in writing to the occupier of such house, requiring him, within a time specified therein, to obtain such further supply (not exceeding a supply at the rate of thirty gallons per day for each person) as to them shall appear necessary, and to do all such works as may be necessary for that purpose; and if such notice be not complied with within the time therein specified, it shall be lawful to take proceedings for overcrowding, in the manner provided by the "Nuisances Removal Act for England, 1855;" (*e*) and upon

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on parties where there is no existing or intended sewer within one hundred feet of the house or site, to drain into a cesspool, is limited to houses erected or rebuilt after the passing of that Act. This provides temporary means of drainage in cases in which certain property, whether built before or after the Act, must from its situation either drain into cesspools, or remain wholly without drainage.

(*d*) See sections 73, 76, and 77 of 18 & 19 Vict. c. 120, *ante*.

(*e*) By the 29th section of the Nuisances Removal Act, 1855, 18 & 19 Vict c. 121, on a certificate by the medical officer of health, or, if there be

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proof of the fact that the water supply is not sufficient by reason of the number of persons inhabiting the said house (being more than one family), it shall be lawful for the justices to make the like order and to inflict the like penalty as in any other case of overcrowding.

Penalty on persons placing buildings or encroachments on sewers (*a*).

68. Every person who shall knowingly erect or place any building, wall, bridge, fence, obstruction, annoyance, or encroachment in, upon, over, or under any sewer (*b*) under the jurisdiction of the metropolitan board of works, or of any vestry or district board, and every person obstructing, filling in, or diverting any sewer or drain under the jurisdiction, survey, or control of the metropolitan board, or of any vestry or district board, without the previous consent in writing of the board or vestry in whom the same may be vested, shall, in addition to any other proceeding to which he may be liable therefore, forfeit and pay to such respective board or vestry a sum not exceeding £20 for every such offence (*c*); and the board or vestry may demolish and remove any such building, wall, bridge, fence, obstruction, annoyance, or encroachment, and perform any works necessary for restoring or reinstating the sewer or other work or thing damaged; and the party erecting such building, wall, bridge, fence, or causing such obstruction, annoyance, or encroachment, shall also pay the expense of removing and abating them respectively, and of reopening, restoring, repairing, or reinstating any sewer or drain obstructed, filled in, closed up, or diverted; and in case of a continuing offence in any of the cases aforesaid, the offender shall be liable to a further penalty, not exceeding £5, for each day after notice thereof from the metropolitan board of works, or from the

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none, of two qualified medical practitioners, the local authority shall cause proceedings to be taken before the justice to *abate* such overcrowding, and the justices shall thereupon make such order as they may think fit, and the person permitting such overcrowding shall forfeit a sum not exceeding 40*s*. See cases referred to in note to Nuisances Removal Acts, *post*, Appendix.

(*a*) The Metropolis Local Management Act, 18 & 19 Vict. c. 120, has no clause similar to that contained in the Metropolitan Sewers Act, 1848, 11 & 12 Vict. c. 112, s. 145, preserving, with certain exceptions, the provisions and powers of 23 Hen. 8, c. 5, and the subsequent general Acts relating to commissions of sewers. The 68th and 135th sections of that Act transfer to boards and vestries the rights vested in their predecessors *concerning or incident* to sewers; but the only remedies against wrongdoers are those contained in the substantive provisions of the Act, viz., the 77th, 83rd, 204th, 205th, and 206th sections, which are limited to the specific injuries described therein, and fail to reach many of those acts of wrongful interference with the subject-matters of jurisdiction by the boards and vestries which it is essential to repress or punish. As to the remedies under the general law of sewers in cases of annoyance and encroachment, see Callis on Sewers, 171, 178, Serj. Woolrych, Law of Sewers, p. 126, *et seq.*, 3rd ed., and the decisions, cited in the notes, which tend to elucidate the nature of the wrongful acts described in this and the following section. See note to section 68, 18 & 19 Vict. c. 120, as to the rights of boards and vestries in relation to sewers.

(*b*) In the case of the *Poplar District Board of Works* v. *Knight and another*, referred to in note (*b*) to section 204 of 18 & 19 Vict. c. 120, *ante*, the river bank or wall of the Thames was held to be a *sewer* within that section; and see definition of the word "sewer" in section 250 of that Act, *ante*; see decisions referred to in note to section 204 of Metropolis Management Act, 1855, *ante*, prohibiting the erection of buildings in, over, or under sewers.

(*c*) As to the recovery of the penalty, see section 102, *post*.

vestry or district board, to be recovered by action at law or before any justice of the peace by a summary proceeding, at the option of the board or vestry: Provided always, that nothing herein contained shall extend to prevent or impede the maintenance, repair, or renewal of any buildings or works under which a sewer or drain has been constructed, but so, nevertheless, that such buildings or works shall not injure or obstruct the said sewer or drain (*d*).

Penalty on persons interfering with sewers.

69. Any person who shall take up, remove, demolish, or otherwise interfere with any sewer or part of a sewer vested in the metropolitan board of works, or in any vestry or district board, without the previous permission in writing of such board or vestry, or who shall wilfully damage any sewer, bank, defence, wall, penstock, grating, gully, side entrance, tide valve, flap, work, or thing vested in the metropolitan board or any vestry or district board, or do any act by which the drainage of the metropolis or any part thereof may be obstructed or injured, shall for every such offence forfeit and pay to the said metropolitan board of works, or to the vestry or district board aggrieved by any such act, for every such offence a sum not exceeding £20, and shall also pay to such board or vestry all the expenses of repairing, restoring, reinstating, or amending any sewer or other work or thing so taken up, removed, demolished, damaged, or interfered with, to be recovered by action at law or before a justice of the peace by a summary proceeding, at the option of the board or vestry.

Vestries in schedule (A.) and district boards empowered to provide and maintain drinking fountains (*e*).

70. The vestry of any parish mentioned in schedule (A.) to the said firstly-recited Act and any district board may provide and maintain drinking fountains in such convenient and suitable situations as they may deem proper, and may undertake the maintenance of any drinking fountain already erected within such parish or district, and supply the same with water and defray the expenses thereof; and any expenses incurred by any vestry or district board in providing or maintaining any such fountains or supplying the same with water shall be paid out of the general rate authorized to be raised and levied under the firstly-recited Act; and any person guilty of wilfully fouling the water in any drinking fountain so erected or maintained, or of wilfully damaging any of the said fountains, or any part thereof (*f*), shall forfeit and pay to such vestry or district board for every such offence a sum not exceeding £5, to be recovered by a summary proceeding, and shall also pay to such vestry or district board the expenses of repairing or reinstating any such fountain, or any part thereof, so injured as aforesaid.

(*d*) See as to the absence of any right in the metropolitan board to lateral support for their sewers from the land of adjoining owners *Metropolitan Board of Works* v. *Metropolitan Railway Company*, 38 L. J. C. P. 172, cited in note to section 135 of 18 & 19 Vict. c. 120, *ante*.

(*e*) See circumstances under which a vestry was held not liable for negligence where a person sustained damage by the percolation of water into his cellar from a gulley connected with a pipe erected under the superintendence of the surveyor of the vestry for carrying off waste water from a drinking fountain erected by an association by permission of the vestry; *Gordon* v. *Vestry of St. James, Westminster*, 30 J. P. 24.

(*f*) See as to supply of water for public fountains by local board of health, *Hildreth* v. *Adamson*, 8 C. B. (N. S.) 587, and as to public cisterns, &c., vested in local authorities under Public Health Act, 1875, section 64, and section 68, as to penalty for fouling water, &c.

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Income of estates, property, &c., subject to trusts for repair of highways, to be paid over to vestry or district board (*a*).

71. All property, rights, matters, and things whatsoever which before the passing of the firstly-recited Act were vested in any surveyor or surveyors of highways in connexion with their duties and powers as such surveyor or surveyors, transferred by that Act to any vestry or district board, shall be deemed to have become transferred to and to have vested in such vestry or district board by virtue of the said Act; and so much of the yearly and other incomes of all estates, property, and effects of whatsoever description so vested and transferred as aforesaid as is or may be subject to any use or trust for or in respect of and applicable to the repair of any highways within the metropolis shall be applicable to the repair, maintenance, and improvement of the highways within the metropolis under the provisions of the said Act, and shall from time to time be accounted for and paid over to the respective vestries and district boards, and be applied by them for the purposes of the highways within their parishes and districts, in the same manner as the same could lawfully have been applied before the passing of the said Act.

Vestries and district boards may, with consent of metropolitan board, effect improvements within their parish or district (*b*).

72. The vestry of every parish mentioned in schedule (A.) to the firstly-recited Act, and the district board of every district, shall, with the previous consent in writing of the metropolitan board of works, have power within their respective parish or district to make, extend, widen, alter, or improve any street, road, or way, or any bridge over a canal traversing any part of such parish or district, for the purpose of facilitating passage and traffic, or for any other public purpose; or to contribute and join with the metropolitan board, or with any other body or persons, in any such improvements; and to take by agreement or gift any land, right in land, or property for the purposes aforesaid, or any of them, on such terms and conditions as they may think fit; and for the purposes aforesaid it shall be lawful for any vestry or district board, should they see fit, to take down the present bridges over canals within their parish or district, and to erect others in their place and stead, or to erect new bridges over such canals in such situations as they may deem beneficial, and from time to time to repair and maintain such existing or new bridges, and to indemnify the canal company or other body or persons interested in such bridges against the future repairs and maintenance of any such bridges; and the expenses incurred by any vestry or district board in any such improvements shall be paid out of the general rate authorized to be paid in their parish or district under the firstly-recited Act: Provided that no such extension, widening, alteration, improvement, taking down, or re-erection of any existing bridge over

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(*a*) The language in the 96th section of 18 & 19 Vict. c. 120, transferring to vestries and district boards the powers, authorities, and duties of surveyors of highways, and certain property vested in those officers, is not large enough to include the income and proceeds of certain estates, which are, in some localities, subject to trusts for the repair of highways.

(*b*) The power of making, widening, or improving streets, roads, or ways, is, by the 144th section of the 18 & 19th Vict. c. 120, given to the metropolitan board of works only, who are authorized to contribute and join with any persons in such improvements. This provision enables vestries and district boards to effect improvements of the nature described, and to take land by agreement or gift, with a proviso that the enactment is not to limit the powers given by the General Metropolitan Paving Act, 57 Geo. 3, c. 29, or by any local Act. See the powers on this subject given in 57 Geo. 3, c. 29, s. 80, *et seq.*, *post*, Appendix. By the 19 & 20 Vict. c. 112, s. 11, vestries and district boards are empowered to take by agreement or gift any land for the purpose of open spaces and pleasure grounds.

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any such canal, or the erection of any new bridge over the same, shall be made without the previous consent in writing under their common seal of the company owning such canal, and the provisions of the one hundred and seventh section of the firstly-recited Act shall remain in force and be applicable to this enactment: Provided also, that it shall be lawful for any such vestry or district board, under the provision contained in the one hundred and eighty-third section of the firstly-recited Act, to borrow and take up at interest on the credit of all or any of the moneys or rates authorized to be raised by them under that Act any sums necessary for defraying the expenses of any such improvements: Provided, that nothing in this Act shall extend or be construed to extend to authorize the taking down or removing any bar, gate, rail, or other fence fixed for preventing any thoroughfare into or from any square, street, or way, without the consent of the proprietor of the estate or property upon which such bar, gate, rail, or other fence, square, street, or way shall be situate: Provided that this enactment shall not limit the powers now in force given by the Act next hereinafter referred to, or by any local Act.

Act as to paving and improving parts of metropolis to extend to metropolis as defined by his Act (*c*).

73. The powers of improving and regulating streets and for the suppression of nuisances contained in the Act of the fifty-seventh year of the reign of His Majesty King George the Third, chapter twenty-nine, local and personal, intituled "An Act for better paving, improving, and regulating the Streets of the Metropolis, and removing and preventing Nuisances and Obstructions therein," shall, so far as the same is in force, and is not inconsistent with the provisions of the recited Acts and this Act, extend and apply to the metropolis as defined in the firstly-recited Act and in this Act, including any

(*c*) This Act, 57 Geo. 3, c. 29, the General Metropolitan Paving Act (commonly known as Michael Angelo Taylor's Act), extended to all streets and public places which were at the time of its passing paved or might be thereafter paved within the cities of London and Westminster and borough of Southwark, and any other parts of the metropolis which were included within the weekly bills of mortality, and to all streets and public places which were then paved, or might be thereafter paved, within the parishes of St. Pancras and St. Marylebone, except only certain parts particularly excepted. The exceptions were contained in the 139th section, exempting from the provisions of the Act the estate of the Marquis Camden in St. Pancras, the 140th, exempting the estate of Lord Somers in the same parish, the 143rd, declaring that the Act should not extend to the parishes of St. Mary, Islington, and St. John, Hackney. The 144th section saved certain provisions of the Act 56 Geo. 3, c. 128, with respect to the powers of the commissioners for executing the Act for opening a communication from Marylebone Park to Charing Cross, &c.; and by the 146-7th section the Act was not to extend to the estates of the Collegiate Church of Westminster contiguous thereto. By the 147th section turnpike roads were exempted from its provisions. See the clauses incorporated by the present section, *post*, Appendix; see section 183 of Metropolis Management Act, 1855, authorizing vestries and district boards to borrow, and Act authorizing loans by metropolitan board to the same bodies referred to in note to that section. See jurisdiction of Court of Chancery as to payment into court of purchase money of houses taken by a vestry; re *Saunders* L. R. 8 Eq. 681. Section 68 of 57 Geo. 3, c. 29, prohibiting the keeping of swine within forty yards of any street, being a power of *preventing* and not of *suppressing* nuisances, was decided not to apply to the larger district of the metropolis as defined by the Metropolis Management Act, 1855, *dub. Keating*, J.; *Vestry of Chelsea* v. *King*; 34 L. J. M. C. 9.

Section 73. unpaved streets, and notwithstanding any exceptions therein contained.

Buildings projecting beyond general line when taken down to be set back (*a*).

74. In case any building, situated within any of the parishes, districts, or places comprised in the schedules of the firstly-recited Act, which shall in any part thereof project beyond the general line of the street in which the same may be situate, or beyond the front of the building, wall, or railing on either side thereof, shall at any time be taken down to an extent exceeding one-half of such building, such half to be measured in cubic feet, or shall be destroyed by fire or other casualty, or demolished, pulled down, or removed from any other cause to the extent aforesaid, it shall be lawful for the metropolitan board of works to require the same to be set back to such a line and in such a manner for the improvement of any street as the said board shall direct; provided that the said board shall make compensation to the owners of such building for any damage and expenses which he may sustain and incur thereby: Provided also, that this section shall not apply to any building in the places mentioned in schedule (C.) to the Metropolis Local Management Act which does not abut upon any public street or place.

Mode of proceeding with regard to buildings beyond line of street.

75. The one hundred and forty-third section of the first recited Act, and the one hundred and fortieth section of the Act passed in the seventh year of His Majesty King George the Fourth, chapter one hundred and forty-two, intituled "An Act for consolidating the Trusts of the several Turnpike Roads in the Neighbourhood of the Metropolis north of the River Thames" (*b*) are hereby repealed; and in lieu thereof be it enacted, that no building (*c*), structure, or

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(*a*) This section is in substance borrowed from a provison in the City Sewers Act, 11 & 12 Vict. c. 163, s. 153, by which a similar power is given to the commissioners of sewers for the city, which is not interfered with, as this enactment only applies to the places mentioned in the schedules to 18 & 19 Vict. c. 120. See *Lord Auckland* v. *Westminster District Board*, L. R. 7 Ch. 597, cited in note to next section.

(*b*) The 140th section of 7 Geo. 4, c. 142, provided that, with certain specified exceptions, no building shall be erected on any new foundation within fifty feet of the sides of the road leading from the Edgware Road, near Paddington, to the Great Northern Road in Islington, and from the north end of Great Portland Street to such road,—that no part of the said roads should be paved except under the provisions of that Act; and that if any building should be so erected or pavement laid down, &c., the same should be deemed common nuisances.

(*c*) Neither this Act nor 18 & 19 Vict. c. 120, gives any interpretation to the word *building*. The 1st section of first schedule to the Metropolitan Building Act, *post*, appendix, regulating the structure of buildings, requires that every building shall be enclosed with walls. See as to the meaning of the word *building* in the Building Act; *Stevens* v. *Gourley*, 29 L. J. C. P. 1, where it was held that a shop of wood built on wooden joists laid upon the ground not let into the soil, was a building within the Metropolitan Building Act, 1855.

Where a case or thing of glass and iron had been erected over a projecting shopfront, and the magistrate decided that this was not an *erection*, within the meaning of this section, the court refused to reverse his decision; *Vestry of St. George's Hanover Square* v. *Sparrow*, 33 L. J. M. C. 118.

A magistrate has power to order the removal of a roofed inclosure in front of a building, but not to order a wall to be reduced; *Clark* v. *Vestry of St. Pancras*, 34 J. P. 181.

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erection shall, without the consent in writing of the metropolitan board of works, be erected beyond the general (*d*) line of buildings in any street, place, or row of houses (*e*) in which the same is situate in case the distance of such line of buildings from the highway does not exceed fifty feet, or within fifty feet (*f*) of the highway when the distance of the line of buildings therefrom amounts to or exceeds fifty feet, notwithstanding there being gardens or vacant spaces between the line of buildings and the highway, such general line of buildings to be decided by the superintending architect to the metropolitan board of works for the time being (*g*), and in case any building, structure, or erection be erected, or be begun to be erected or raised, without such consent, or contrary to the terms and conditions on which the same may have been granted, it shall be lawful for the vestry of the parish or the board of works for the district in which such building or erection is situate to cause to be made complaint (*h*) thereof before a justice of the peace, who shall there-

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A fence was held to be an erection within the meaning of a bye-law; *Adams* v. *Bromley Local Board*, 36 J. P. 743.

This section does not apply to ground formerly covered with buildings, unless the owner has relinquished the right to build on the old site, and in such a case the metropolitan board ought to proceed under the 74th section providing for compensation to owners; *Lord Auckland* v. *Westminster District Board*, L. R. 7 Ch. 597. See, however, *Kerr* v. *Corporation of Preston*, L. R. 6 Ch. D. 463, cited in note (*h*), *infra*.

(*d*) The word "general" is substituted for "regular," which occurred in the repealed enactment. See *Tear* v. *Freebody*, 22 J. P. 707; and *Robins* v. *Bury*, 25 J. P. 83.

(*e*) In *R.* v. *Fullford*, 33 L. J. M. C. 122, it was held to be a question of fact for a jury on an indictment under the Local Government Act, whether the houses were such a continuance as to form a street or not. The words "place or row of houses; were not in the repealed section, and their addition will remove doubts as to the application of the provision to separate rows of houses, terraces, and the like in long lines of road. See as to the construction put upon analagous provisions in schedule (E.) of the former Metropolitan Building Act, 7 & 8 Vict. c. 84, by the official referees, Lawes' Proceedings under the Metropolitan Building Act, 1846.

(*f*) The distance in the repealed enactment was thirty feet.

(*g*) See cases cited, *infra*, as to the decision of the superintending architect with respect to the general line.

The magistrate may order the demolition of the building, though the certificate of the superintending architect be not given till after its erection; *Wandsworth District Board* v. *Hall*, 31 L. J. M. C. 69; L. R. 4 C. P. 85.

The certificate of the superintending architect may be obtained at any time before the hearing; *Bauman* v. *Vestry of St. Pancras*, L. R. 2 Q. B. 528.

There has been a conflict of opinion between the Courts of Queen's Bench and Common Pleas as to the effect of the superintending architect's certificate, the former holding it to be conclusive, the latter that it might be questioned by the magistrate. See *Vestry of St. George's, Hanover Square* v. *Sparrow, supra*; and see *Simpson* v. *Smith*, L. R. 6 C. P. 87. But a contrary rule was laid down by the Queen's Bench in *Bauman* v. *Vestry of St. Pancras, supra*; see observations of *Cockburn*, C. J., and *Mellor*, J., dissenting from the decision of the Common Pleas in the *Vestry of St. George's Hanover Square* v. *Sparrow, supra*, and the remarks of *Shee*, J., which seem to leave the magistrate a somewhat wider discretion.

(*h*) This enactment, providing for an inquiry before a justice of the peace, is substituted for the provision in the repealed provision, by which

Section 75. upon issue a summons requiring the owner or occupier of the premises, or the builder or person engaged in any work contrary to this

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the bodies in question were required, in cases in which they intervened, to take upon themselves the responsibility of demolishing the buildings in whole or in part in the first instance,—a responsibility which they were frequently reluctant to assume. The remedy here given by a proceeding before a justice must be strictly pursued, and no indictment would lie; *R.* v. *Lovibond*, 24 L. T. (N.S.) Q. B. 357; 35 J. P. 275.

The limitation of six months in section 107 for making a complaint, does not apply to the order of a magistrate directing a building beyond the general line to be pulled down, the clause in question only applying to pecuniary penalties or forfeitures; *Vestry of Bermondsey* v. *Johnson*, L. R. 8 C. P. 441, the court dissenting on that point from the judgment in *Brutton* v. *St. George's, Hanover Square*, L. R. 13 Eq. 339, where it was held that the limitation applied. It was also in that case decided that the summons could only issue against the builder whilst the building was in course of erection, and at the completion could only go against the owner or occupier; and that the limitation runs not from the completion, but from the time the full extent of the projecture becomes apparent, *ibid.*; but see *Morat* v. *Taylor*, L. R. I Ex. Div. (C.A.) 188, where it was held under a local Act that the complaint must be made within six months from the completion of the building. And see as to limitation under 11 & 12 Vict. c. 43, *Jacomb* v. *Dodgson*, 32 L. J. M. C. 113. And in a proceeding for encroaching on a highway, the limitation runs from the completion of the building or fence constituting the encroachment; *Coggins* v. *Bennett*, L. R. 2 C. P. D. 568. And see as to projection of a house beyond the line of a street; *Police Commissioners of Fort William* v. *Kennedy*, L. R. W. N. (1878), p. 177.

Under section 156 of the Public Health Act, 1875, it was decided that a court of equity has no jurisdiction to restrain proceedings to recover a penalty for building beyond the frontage line; *Kerr* v. *Corporation of Preston*, L. R. 6 Ch. Div. 463. The case of *Mayor of York* v. *Pilkington*, 2 Atk. 302, disapproved of; and see observations of the Master of the Rolls to the effect that the Lords Justices, in *Lord Auckland* v. *Westminster District Board*, proceeded on a misconception, and pointing out the distinction between restraining from pulling down and from obtaining an order to pull down.

Where a corporation under a local Act had power to prescribe the line of frontage for houses to be rebuilt after being pulled down, and did not prescribe the line of frontage for a church until after the foundations had been put in, Held, that they could no longer restrain the erection of the edifice as commenced; also that the church was a *house* within the Act, and the perpetual curate, *owner*; *Corporation of Folkestone* v. *Woodward*, L. R. 15 Eq. 159; *Angel* v. *Paddington*, L. R. 3 Q. B. 714, distinguished. Where a town council had approved a plan for rebuilding premises, Held that they had no right afterwards to order the line of frontage to be altered; *Slee* v. *Mayor of Bradford*, 27 J. P. 612.

A local board cannot pull down a building in alleged contravention of a bye-law, without giving the owner an opportunity of showing cause why it should not be pulled down; *Masters* v. *Pontypool Local Board*, L. R. 9 Ch. D. 677; and see *Cooper* v. *Wandsworth Local Board*, 32 L. J. C. P. 185.

Suffering a party-wall to remain unaltered in contravention of a bye-law was held not to be a "continuing offence"; *Marshall* v. *Smith*, L. R. 8 C. P. 416; but Public Health Act, 1875, section 158, provides that the existence of a building or wall in contravention of a bye-law shall be a continuing offence, but a penalty shall not be incurred in respect thereof after the expiration of one year from the day when the offence was committed or the bye-law was broken.

See decree that the defendant should perform his contract to erect a house

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enactment, to appear at a time and place to be stated in the summons to answer such complaint; and if at the time and place appointed in such summons the said complaint shall be proved to the satisfaction of the justice before whom the same shall be heard, such justice shall make an order in writing on such owner or occupier, builder, or person, directing the demolition of any such building or erection, or so much thereof as may be beyond the said general line so fixed as aforesaid, within such time as such justice shall consider reasonable, and shall also make an order for the payment of the costs incurred up to the time of hearing; and in default of the building or erection complained of being demolished within the time limited by the said order, the said vestry or board shall forthwith enter the premises to which the order relates and demolish the building or erection complained of, and do whatever may be necessary to execute the said order, and may also remove the materials to a convenient place, and subsequently sell the same, as they think fit (*a*); and all expenses incurred by the said vestry or board in carrying out the said order and in disposal of the said materials may be recovered by the said vestry or board from the owner or occupier of the said premises, or the builder or person engaged in the work, either by action at law or in a summary manner before a justice of the peace, at the option of the said vestry or board, in manner provided by the two hundred and twenty-seventh section of the firstly-recited Act as to the recovery of penalties.

Conditions as to buildings beyond line of street.

76. The metropolitan board may, in giving consent for any erection (*b*) beyond the regular line of the buildings in any street, annex any condition to the consent given by the board, and in case such erection shall not be made in accordance with the consent of the board, or be in any manner altered or raised without their consent, the board may enter and demolish or alter the buildings or structure, or

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subject to a modification to render it conformable to the requirements of the metropolitan board as regarded the line of buildings; *Cubitt* v. *Smith*, 28 J. P. 820.

A bye-law made by a local board of health imposing continuing penalties on any person who shall do or omit to do certain acts contrary to such bye-law, is invalid, as exceeding the authority given by the Local Government Act; *Young* v. *Edwards*, 33 L. J. M. C. 227.

The Metropolis Management and Building Acts Amendment Act, 1878, section 7, prohibits the erection of houses or buildings at less than the *prescribed* distance from the centre of roads or passages not being highways. Section 4 interprets the term *prescribed* as twenty feet from the centre of the roadway where such roadway is used for the purpose of carriage traffic, and ten feet from the centre where such roadway is used for the purposes of foot traffic only.

(*a*) This is a new power. In *Tear* v. *Freebody*, *supra*, the removal of the materials was held to be a conversion.

(*b*) This section is evidently hastily drawn, and contains some verbal inaccuracies. The word "erection" only is here used, omitting the word "building" and "structure" occurring in the preceding section, and in the subsequent part of this section the words "buildings or structures" are used, and the word "erection is dropped. If the preceding section proceeds upon the supposition that there may be structures or erections which are not buildings, the present section seems to lose sight of the distinction, and it treats all three expressions as synonymous. Where a building was erected not in accordance with the conditional permission granted by the metropolitan board, an order for demolition was sustained; *Bauman* v. *Vestry of St. Pancras*, cited in note to section 75, *ante*.

Section 76. any part thereof, and recover all expenses, or may impose any penalty not exceeding 40s., to be summarily recovered for every day during which any building or structure being a contravention of such condition shall exist after notice from the said board or any officer of the board to remedy the complaint.

Expenses of paving new streets.

77. Where any vestry or district board shall, under the powers given by the one hundred and fifth section of the firstly-recited Act, have paved or be about to pave (*a*) any new street (*b*), the owners of the land (*c*) bounding or abutting on such street shall be liable to contribute to the expenses or estimated expenses of paving the same, as well as the owners of houses therein, provided that it shall be lawful for the vestry or district board to charge the owners of land in a less proportion than the owners of house property, should they deem it just and expedient so to do; and any such costs or expenses, including the costs of paving at the points of intersection of streets, and all other incidental costs and charges, shall be apportioned by the vestry or board, and shall be recoverable either before the work shall be commenced, or during its progress, or after its completion; and it shall be lawful for the vestry or district board at their discretion to accept payment of the amount apportioned or charged in respect of each house or premises by instalments spread over a period not exceeding twenty years, and any such amount shall be recoverable from the present or any future owner of the premises either by action at law (*d*) or in a summary manner before a justice of the peace, at the option of the vestry or board.

Vestry may flag footways and levy the costs.

78. In case any footway laid out at the passing of the firstly-recited Act shall have been repaired by the vestry or any other body, but shall not have been flagged, and the vestry or district board shall have deemed it necessary or expedient, or shall deem it necessary or expedient that the same should be flagged, and such vestry or board shall have flagged or shall flag the same, either throughout the whole breadth thereof or any part of such breadth, it shall be lawful for such vestry or board to levy the cost and expenses by a rate or rates (*e*) upon the occupiers (*f*) of the houses (*g*)

(*a*) See interpretation of word "pave," section 112. *post.*

(*b*) See *R.* v. *Dayman*, 26 L. J. M. C. 128, cited in note to section 105 of 18 & 19 Vict. c. 120, *ante*, wherein it was decided to be a question for the magistrate to determine whether or not a street was a "new street," and refer to *Bowles* v. *St. Mary, Islington*, 39 J. P. 757. See now the definition of the expression "new street," section 112, *post.*

(*c*) The provision referred to imposed the cost of this work on the owners of houses exclusively, and the section as now framed contains additional provisions for the recovery of incidental expenses. It also gives a wider discretion to the vestry as to the time and mode of payment. See the decision on this and the provision in the earlier Act cited in note to section 105 of Metropolis Management Act, 1855, *ante.*

(*d*) These expenses could before not be recovered by action; *Vestry of St. Pancras* v. *Batterbury*, 26 L. J. C. P. 243.

(*e*) What is here called a rate would be a rateable proportion of the expenses of flagging distributed among the occupiers according to some criterion to be fixed by the vestry, probably the frontage of the premises abutting on the footpath. The word apparently has no reference to the rateable value of the property, as in the case of other rates under 18 & 19 Vict. c. 120.

(*f*) The cost is here thrown upon the "occupiers," and not upon the "owners," like the expenses falling under the preceding section. There

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in the road, street, or part abutting on or next to the footway which shall have been so flagged, either in one sum or by equal instalments spread over a period not exceeding twenty years, as the said vestry or board may see fit; and the said vestry or board shall thenceforth keep the said flagging in good and sufficient repair.

Sums to be paid by the Duke of Bedford to parties making up roads and footways on Bedford estate, in the parish of St. Pancras, to be added to debt on that part of the parish.

79. And whereas at the time of the coming into operation of the firstly-recited Act (*h*) certain houses were in course of erection or about to be erected by private parties on certain lands, parts of the estate belonging to his Grace the Duke of Bedford, in the parish of Saint Pancras, and the roads and footways in front of the said houses and land were partly paved by and at the expense of the said parties before the coming into operation of the firstly-recited Act: And whereas the commissioners acting under the local and personal Act of the session holden in the thirty-ninth and fortieth years of King George the Third, chapter forty-nine, relating to the paving of the said estate, and whose powers were determined by the firstly-recited Act, ought, under the power vested in them by the said Act of the thirty-ninth and fortieth years of King George the Third, to have executed the said works of paving, or to have defrayed the cost thereof, and payment for the same would, if the powers of the said commissioners had not been determined, have been made out of the money arising from rates or assessments to be made under the said Act of King George the Third, or money borrowed on the security thereof; but the arrangements respecting the said works were not such as to be binding on the vestry of the said parish under the transfer made to such vestry by the said firstly-recited Act (*i*) of the debts and liabilities legally charged upon or payable out of rates or assessments authorized to be made under the said Act of King George the Third: And whereas certain of the said parties are willing to complete the said roads and footways in consideration of the payment to them of certain sums of money, such sum to be received in satisfaction as well of past as of future expenses incurred by them in the making or paving of the said roads or footways: And whereas his Grace the Duke of Bedford is willing to advance such sums of money, and it is expedient to authorize the addition of such sums to the said debt on the completion as aforesaid of the said roads and footways and payment of the said sums to the said parties respectively: Be it therefore enacted, that upon the completion of the said roads and footways to the satisfaction of the said vestry, and the production to them of the receipts in writing of the said parties respectively for the said sums from his Grace the Duke of Bedford or his agent, such sums shall respectively become debts to the said duke, and be added to and form part of the debt which at the time of the coming into operation of the firstly-recited Act was legally charged upon the said rates or assessments, and shall carry interest at the rate of £4 per

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seems no reason for the distinction, as both classes of works are of a permanent character, and more especially benefit the owner. This provision would operate with great hardship on a tenant from year to year, or for a short term.

(*g*) This does not, as under the 77th section, include the owners of *land* abutting on the footpath.

(*h*) Viz., on the 1st January, 1856. This clause was introduced in consequence of the failure of an indictment against the vestry of St. Pancras for the non-repair of one of these roads, tried in the Court of Queen's Bench at Westminster, 26th November, 1859.

(*i*) That is, by the 180th section of 18 & 19 Vict. c. 120.

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centum per annum, payable half-yearly on the 1st day of January and the 1st day of July in every year from the time of the receipt of such sums by the said parties or the completion of the said roads and footways as aforesaid, which shall last happen; and section one hundred and eighty of the firstly-recited Act shall be applicable accordingly in respect of such sums and the interest thereof in like manner as in respect of such debt as last aforesaid.

Proviso to section 106 of 18 & 19 Vict. c. 120, repealed. Notice of intention to repair street not being a highway.

80. The proviso of the one hundred and sixth section of the firstly-recited Act is hereby repealed; and in lieu thereof be it enacted, that no street not being a highway (*a*) shall be repaired as in the said section mentioned, unless notice be given to the owners (*b*) and rated occupiers of the houses in such street respectively; and service of any such notice may be effected by leaving the same at the several houses in such street, or where any of the said houses shall be unoccupied, by affixing the same upon the outer door or some conspicuous part of such houses; and provided further, that no such street shall be repaired as in the said section mentioned if within one month after notice has been given as aforesaid written notice of objection to such repair, signed by at least two-thirds of the owners or rated occupiers of houses in the said street, shall be given to the vestry or district board.

Where owners of courts, &c, omit to drain and pave, vestry or district board may perform the works, charging expenses to owner.

81. In any case of default by the owner or any court, passage, or public place, not being a thoroughfare, to comply with the requisition of any vestry or district board to perform works of paving or draining of the nature described in the one hundredth section of the firstly-recited Act, it shall be lawful for the vestry or board, should they see fit, in lieu of enforcing the penalty therein mentioned, to execute and perform such works, and recover the expenses thereof from the owner either by action at law or in a summary manner before a justice, at the option of the vestry or board.

Reinstatement of pavement broken up by works of companies, &c. (*c*)

82. In every case in which any company or person shall be liable under the firstly-recited Act to reinstate the pavement, surface, or soil of any street under the control of any vestry or district board which may have been broken up or opened, or to repay to such vestry or board the expenses of reinstating the pavement, surface, or soil of any street, every such company or person shall be liable to reinstate the pavement, surface, or soil, or to pay the expenses of reinstating the pavement, surface, or soil of such parts of the street as shall have

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(*a*) The term *highway* may include streets other than those repairable by the parish. See *R.* v. *Dayman*, 26 L. J. M. C. 128.

(*b*) Instead of the provision in the repealed section requiring notice to all "persons interested," notice is to be given to owners and rated occupiers, and a special mode of service is prescribed. The objection must now proceed from two-thirds of the owners or rated occupiers instead of from a single person interested, as under the repealed section. The word "owner" is for this purpose by section 250 of 18 & 19 Vict. c. 120, defined to mean the person receiving the rackrent of the premises.

(*c*) The provisions in 18 & 19 Vict. c. 120, as to the breaking up and reinstatement of pavements disturbed by companies, are the 109th and following to the 115th inclusive. The direction in the 110th section is, "to make good the pavement, or surface, or soil, broken up or injured." The obligation of companies is now extended so as to comprise not only the parts actually broken up or opened, but such *parts contiguous thereto* as may be affected by the works of the company. This provision is founded upon the

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been so broken up or opened, as well as of the part or parts contiguous thereto which may be affected by the works of such company or person, to the reasonable satisfaction of the surveyor for the time being of the vestry or district having control over the pavements in such parish or district.

Metropolitan board may make bye-laws for guidance of vestries, &c., in construction of sewers (*d*).

83. The metropolitan board of works may, in order to secure the efficient maintenance of the main and general sewerage of the metropolis, from time to time make, alter, and repeal bye-laws for the guidance, direction, and control of the vestries of parishes in schedule (A.) to the firstly-recited Act, district boards, and all other persons, in relation to the levels, dimensions, construction, maintenance, ventilation, and cleansing of sewers in their respective parishes, districts, or parts, and for the other objects enumerated in the one hundred and thirty-eighth section of the firstly-recited Act, subject in all respects (*e*) to the several provisions relating to bye-laws contained in the two hundred and second section of the said Act; but this provision shall only extend to the city of London and the liberties thereof, so far as regards the main drainage of the metropolis.

Vestries, &c., may stop up streets during execution of works (*f*).

84. It shall be lawful for any vestry or district board, with the previous sanction of the metropolitan board of works, to close or stop up any street (*g*) within their parish or district, during the execution of any paving, sewerage, or other works by such vestry or board in such street, and to keep the same closed and stopped up for such time as shall be necessary in that behalf, and allowed by the metropolitan board.

Height of buildings in certain streets (*h*).

85. No building, except a church or chapel, shall be erected on the side of any new street of a less width than fifty feet, which shall exceed in height the distance from the external wall or front of such building to the opposite side of such street, without the consent in writing of the metropolitan board of works; nor shall the height of any building so erected be at any time subsequently increased so as to exceed such distance without such consent; and in determining

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23rd section of 57 Geo. 3, c. 29 (Metropolitan General Paving Act); see *Hyams* v. *Webster*, L. R. 2 Q. B. 264; 4 Q. B. (Ex. Ch.) 138, as to subsequent subsidence after reinstatement of roadway.

(*d*) The power of making bye-laws given by the 202nd section of 18 & 19 Vict. c. 120, does not extend to regulations respecting sewers, but is limited to those relating to pipes, drains, and other means of communication with sewers.

(*e*) This includes the power of imposing penalties, subject to the approval of the bye-laws by the secretary of state.

(*f*) A railway company in the course of their works claiming the right to stop up a street in the city of London under certain special Acts, were restrained by injunction; *Attorney-General* v. *Great Eastern Railway Company*, 41 L. J. Ch. 202, 505.

(*g*) The power to stop up the way through or along streets is given by the 52nd section of 57 Geo. 3, c. 29 (General Paving Act), for the purposes there specified.

(*h*) The bye-laws promulgated under Local Government Act, 21 & 22 Vict. c. 98, s. 34, contain provisions of a similar character. This regulation as to the height of buildings is not to be taken as limiting the right by prescription to ancient lights, but such right depends upon the amount of obstruction in each particular case; *Theed* v. *Debenham*, L. R. 2 Ch. D. 165; see *Hackett* v. *Baiss*, L. R. 20 Eq. 494.

Section 85. the height of such building the measurement shall be taken from the level of the centre of the street immediately opposite the building up to the parapet or eaves of such building; and every person committing any offence under this enactment shall be liable to a penalty of £5, and in case of a continuing offence to a further penalty of 40s. for every day during which such offence shall continue after notice from the said board, to be recovered by summary proceeding.

Metropolitan board may place roadway, footpaths, &c., in different parishes or districts under management of one vestry or district board (*a*).

86. Where in any street the roadway and footpaths or either of them are or is situate in more than one parish or district, or where the whole of the roadway and footpaths of any street are situate in one parish or district, and the whole or any part of the houses and buildings abutting on such roadway or footpaths are situate in another parish or district, in either of the said cases it shall be lawful for the metropolitan board of works, should they deem it convenient and proper so to do, to order that any such roadway and footpaths shall, for the purposes of sewerage, drainage, paving, and lighting, or any of them, be under the exclusive management of the vestry or district board of one of the said parishes or districts, and to order and direct in what proportions the costs of constructing and maintaining any new sewer or drain in such street, or of the reconstruction, reparation, or maintenance of any existing sewer or drain therein, or of the paving or making up or lighting of the roadway or footpaths thereof, and the repair and maintenance of such roadway or footpaths, shall be borne and defrayed by the vestry or board of each parish or district, and the decision of the said metropolitan board thereon shall be final and conclusive; and in case of default by any vestry or board liable under any such order to any such payment, the vestry or district board entitled thereto may sue for and recover the amount thereof from the vestry or board so making default by action at law.

Affixing names of streets by vestries and district boards (*b*).

87. The one hundred and forty-first section of the firstly-recited Act is hereby repealed; and in lieu thereof be it enacted, that vestries and district boards shall and may, within the limits of their respective jurisdictions, from time to time cause to be painted or affixed on a conspicuous part of some house or building at or near each end, corner, entrance, or other convenient part of any street in their

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(*a*) By the 140th section of 18 & 19 Vict. c. 120, the metropolitan board is authorized to place any street in different parishes under one management, and the 160th section directs that the sums required for defraying the expenses incurred in the part so placed under their management, shall be paid by the vestry or district board having control over that part. This enactment empowers the board, in the cases comprised within the enactment, to determine the proportions in which the cost of the works and operations specified shall be borne by such parish.

(*b*) See case of *Daw* v. *Metropolitan Board of Works*, 31 L. J. C. P. 223, referred to in note to section 141 of Metropolis Management Act, 1855. By this provision, as re-enacted, the several vestries and district boards as to parts out of the city limits, and the commissioners of sewers within those limits, are to affix the names of streets instead of the metropolitan board as directed by the repealed section. Further, the power of the metropolitan board to alter the names of streets is not limited to cases in which more than one street is called by the same name, and the exercise of that power is no longer subject to the approval of the commissioners of Her Majesty's works. And with respect to the numbering of houses, the duty of the metropolitan board is henceforward limited to the making

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Alteration of names by metropolitan board, and execution of orders by vestries and district boards.

parish or district, the name of such street, and renew such name whenever it may be obliterated or defaced; and the metropolitan board of works may alter the name of any street to any other name which to such board may seem fit; and before any name is given to any street, notice of the intended name shall be given to the said metropolitan board, and the said board may, by notice in writing given to the person by whom notice of such intended name has been given to them, at any time within one calendar month after receipt of such notice, object to such intended name; and it shall not be lawful to set up any name to any new street in the metropolis until the expiration of one calendar month after notice thereof has been given as aforesaid to the said metropolitan board, or to set up any name objected to as aforesaid; and whenever the said metropolitan board shall, under the power hereinbefore given, have ordered or directed an alteration in the name or names of any street, or of any place or row of houses, or in any line of road (*c*), they shall transmit a copy of their order directing such alteration to the vestry or district board in whose parish or district such street, place, row of houses, or line of road shall be situate; and such vestry or district board shall thereupon cause to be painted or affixed on a conspicuous part of some house or building, to the satisfaction of the said metropolitan board, at or near each end, corner, entrance, or other convenient part (*d*) of the said street, place, row of houses, or line of road, the altered name or names specified in the order of the metropolitan board, and shall perform all other necessary acts for giving effect to such order; and it shall be lawful for the said metropolitan board from time to time to order and direct that any row of houses or buildings in any street or in any line of road in the metropolis shall, for the purpose of distinguishing the same, be marked with such numbers or names as they shall deem convenient and proper for that purpose, and which they shall specify in their order in that behalf; and whenever the said metropolitan board have passed any such order as last aforesaid, they shall transmit a copy thereof to the vestry or district board in whose parish or district the said street, place, row of houses, or line of road shall be situate, and it shall thereupon become the duty of such vestry or district board to perform all necessary acts and to take all requisite proceedings for carrying the order of the said metropolitan board into execution, and for that purpose they shall give notice to the owners or occupiers of the houses and buildings in such street, place, row of houses, or line of road to mark their several houses and buildings with such numbers or names as the said metropolitan board shall by their said order have ordered or directed, and to renew the numbers or names of such houses or buildings as often as they are obliterated or defaced; and if any occupier of any such house or building neglect for one week after notice from the said vestry or district board to mark such house or building with such number or name as shall be mentioned and required in the said notice, or to renew the number or name as aforesaid, he shall be liable to a penalty not exceeding

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the order and the transmission of a copy of it to the vestry or district board; and all subsequent acts and proceedings for giving effect to the order are transferred to the last-named bodies.

(*c*) Throughout the repealed enactment the word "street" only is used. The words "or any place, row of houses, or on any line of road," are here introduced for the first time.

(*d*) The words "or other convenient part," are new.

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40*s.*, and the said vestry or district board may cause such number or name to be so marked or renewed, and recover the expenses thereof from the owner of such house or building by a summary proceeding before a justice of the peace; and if any person wilfully destroy, pull down, obliterate, or deface the name of any street or line of road in the metropolis, or the name or number of any house or building therein, or paint, affix, or set up any name or number to any house or building contrary to this enactment, he shall for every such offence forfeit a sum not exceed 40*s.*; and it shall be lawful for the said vestry or district board to cause such name or number so painted, affixed, or set up contrary to the directions in their said notice to be obliterated or destroyed: Provided always, that the powers conferred by this section upon the metropolitan board shall extend to the city of London and the liberties thereof; and all matters by this section directed and authorized to be done by vestries and district boards shall and may be done within the city of London and the liberties thereof by the commissioners of sewers of the said city and liberties (*a*).

Persons omitting to give notice required by section 76 of 18 & 19 Vict. c. 120, liable to penalty (*b*).

88. If any person shall, without having given the notice directed by the seventy-sixth section of the firstly-recited Act, begin to lay the foundation of any new house or building within any parish mentioned in schedule (A.) of the said Act, or any district in schedule B. of the said Act, or to make any drain for the purpose of draining either directly or indirectly into any sewer under the jurisdiction of the vestry or board of such parish or district, he shall become liable to a penalty for every such offence not exceeding £5, and to a continuing penalty of 40*s.* for each and every day during which he shall omit to give the notice directed by the said Act.

Penalty on persons wrongfully collecting ashes, &c. (*c*).

89. If any person or persons other than the person or persons employed by or contracting with the vestry or district board of any parish or district, or those employed by or under such person or persons, shall receive, carry away, or collect any dirt, dust, cinders, rubbish, ashes, or breeze from any house or premises, or from any street or highway in any parish or district, or any road scrapings, refuse, or mud, from any street or highway within any parish or district, it shall and may be lawful for any justice of the peace, upon complaint to him made, to grant a summons, or, if such justice shall think fit, a warrant to bring before him such offender or offenders, and such justice shall examine on oath any witness or witnessess who shall appear to give information or evidence touching such offence; and any person convicted of any such offence shall forfeit to the said vestry or district board a sum not exceeding £5, to be recovered by a summary proceeding; provided that nothing hereinbefore contained shall be deemed to apply to the removal of the refuse of any trade, manufacture, or business, or of any building materials from any house or land by the direction of the owner or occupier of such house or land (*d*).

(*a*) See the case of *Daw* v. *Metropolitan Board of Works*, 31 L. J. C. P. 223, cited in note to section 242 of 18 & 19 Vict. c. 120, *ante*.

(*b*) The section referred to imposes no penalty for an omission to give the notice directed by it.

(*c*) See section 127 of 18 & 19 Vict. c. 120, *ante*, vesting the property in dirt, dust, &c., in the vestries and district boards.

(*d*) As to refuse, see the case of *Gray* v. *Cadby*, cited in note to section 128 of Metropolis Management Act, 1855, *ante*.

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Penalties for affixing bills on lamp-posts, notice-boards, &c. (*e*).

90. Every person who shall affix or cause to be affixed any bill notice, or paper against, or deface or disfigure any street-post, lamp-post, pump, or building vested in any board or vestry, or who shall remove, deface, or injure any notice-board, placed or set up by order of any board or vestry, or who shall pull down, obliterate, or deface any notice set up or affixed by order of any board or vestry, shall for every such offence forfeit a sum not exceeding 40*s.*, to be recovered before a justice by a summary proceeding.

Penalty for keeping swine in improper situations (*f*).

91. No person within any parish mentioned in schedule (A.) to the firstly-recited Act, or in any district mentioned in schedule (B.) to the said Act, shall breed, feed, or keep any swine in any locality, premises, or place which may be unfit for the keeping of swine, or in which the breeding, feeding, or keeping swine may create a nuisance, or be injurious to health; and any person breeding, feeding, or keeping swine in or on any such locality, premises, or place, shall be liable to a penalty not exceeding 40*s.*, and to a further penalty not exceeding 10*s.* for every day during which he shall continue such offence after notice from the vestry or district board to discontinue the same, and any such penalty may be recovered by a summary proceeding; and if in any proceeding under this enactment it shall be proved to the satisfaction of the justice or justices that any such locality, premises, or place are or is unfit for the keeping of swine, such justice or justices may prohibit the using thereof for that purpose for the future; and any person disobeying the order of any justice or justices in this behalf shall be liable to a penalty of 10*s.* for every day during such his default.

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92. The one hundred and thirty-first section of the firstly-recited Act (*b*), and the thirty-fifth section of "The Metropolitan Market

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(*e*) These offences are not included within the 206th section of 18 & 19 Vict. c. 120. The 5th section of 57 Geo. 3, c. 29 (Metropolitan General Paving Act), only applies to the removal of the notice-boards there mentioned. See section 87, p. 314, *ante*, as to penalties for defacing the names of streets.

(*f*) By the 73rd section of this Act, certain provisions of 57 Geo. 3, c. 29, the Metropolis General Paving Act, are incorporated with this Act. Held that the 68th section of 57 Geo. 3, c. 29, being a power of *prevention* and not of *suppression*, did not apply to the larger district of the metropolis as defined by the Metropolis Management Act, 1855; *Vestry of Chelsea* v. *King*, 34 L. J. M. C. 9.

In *Fowler* v. *Vestry of Kensington*, 36 J. P. 69, the magistrate was held under the circumstances of the case to have acted properly on an information for keeping swine contrary to this enactment, in disallowing an objection that the premises were incorrectly described.

A bye-law by a town council, forbidding the keeping of pigs generally, was held bad; *Everett* v. *Grapes*, 3 L. T. (N.S.) 669; but a bye-law prohibiting the keeping of pigs within 100 feet of a dwelling-house, and a bye-law requiring certain drainage for the premises where pigs were kept, was held not unreasonable, *Wanstead Local Board* v. *Wooster*, 37 J. P. 403; neither was it necessary to prove that the infraction of the bye-law created a nuisance, *Ibid.* Compare section 8 of Nuisances Removal Act, 1855, and 2 & 3 Vict. c. 47, s. 6, sub-section 5, as to keeping swine to the front of streets, &c., so as to be a nuisance.

(*g*) The repealed section provided for notices to vestries and district boards before slaughter-houses could be licensed, and the 35th section of 20 & 21 Vict. c. 135, contained similar provisions. The Slaughterhouses (Metropolis) Act, 1874, prohibits the establishing anew within the limits of the metropolis, the businesses of blood boiler, manure manufacturer, soap

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Vict. c. 120, and section 35 of 20 & 21 Vict. c. 135, repealed. Licences granted thereunder to continue.

Act, 1857" (twentieth and twenty-first Victoria, chapter one hundred and thirty-five) (local and personal), are repealed; but all licenses granted in pursuance of the provisions in the said repealed sections contained shall continue in force for the space of one year next after

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boiler, tallow melter, and knacker, subject to penalties; and in the case of the business of a fellmonger, tripe boiler, slaughterer of cattle, and any other which the local authority may by order, confirmed by the local government board, declare to be offensive, it imposes a penalty on the person establishing any such business within the metropolis without the sanction of the local authority; and the statute, amongst others, contains amended provisions with respect to the granting of licenses for slaughter-houses. See the Act, *post*, Appendix, and reference to bye-laws made by the metropolitan board for regulating the conduct of businesses under the provisions of the Act in the notes thereto.

The 41 & 42 Vict. c. 74, Contagious Diseases (Animals) Act, 1878, by section 34 empowers the Privy Council to make general or special orders for (1) registration with the local authority of all persons carrying on the trade of cowkeepers, dairymen, or purveyors of milk, (2) for the inspection of cattle in dairies, and for prescribing and regulating the lighting, ventilation, cleansing, drainage, and water supply of dairies and cow-sheds in the occupation of persons following the trade of cowkeepers or dairymen, (3) for securing the cleanliness of milk stores, milk shops, and of milk vessels used for containing milk for sale by such persons, (4) for prescribing precautions to be taken for protecting milk against infection or contamination, (5) for authorizing a local authority to make regulations for the purposes aforesaid, or any of them, subject to such conditions, if any, as the Privy Council prescribe. The Metropolitan Board of Works are the local authority for the metropolis, exclusive of the city of London and the liberties thereof, where the Corporation of London are the authority, but subject to the provisions in section 9 of the Act, viz., that the Corporation of London shall alone be the local authority in and for the metropolis for purposes of the provisions of the Act relating to foreign animals; that the city of London and the liberties thereof shall contribute for the purposes of the Act to the metropolitan consolidated rate; and that no part of the expenses of the local authority for a county shall be included in any precept or warrant for the levy or collection of a county rate within the metropolis. This Act, with certain exceptions, repeals the Contagious Diseases (Animals) Act, 1869, and the Acts enumerated in the schedule. The provisions excepted from the repeal are paragraphs 2, 3, and 4 of section 28, and sections 100 and 101. The present Act is divided into four parts, headed respectively, General, England, Scotland, and Ireland, and it contains some definitions not included in the corresponding clauses of the repealed statute. The Act contains provisions, amongst others, for the declaration of, and proceedings with respect to infected areas in case of cattle plague, pleuro-pneumonia, foot and mouth disease, and other diseases, the slaughter of animals affected with those diseases, and payment of compensation, the rates to have effect in relation to infected places or areas, the power of the Privy Council to provide by general orders respecting animals affected with disease while exposed for sale or exhibited in a market, &c., during transit, the separation of diseased animals, notice to the police, and proceedings thereon, the provision by railway companies of water and food at stations, orders of the Privy Council for prohibiting the landing of foreign animals, carcases, fodder, &c., brought from any specified foreign country, and for prescribing the ports at which alone foreign animals may be landed, and for other purposes, the powers and duties of local authorities and committees, the appointment of inspectors and other officers, and their duties, reports to the Privy Council, the expenses and borrowing powers of local authorities, the detention of vessels, burial of carcases washed ashore, order of Council, returns to Parliament, &c. The following cases arise under the repealed Act: as to proof of order of Privy Council refer to *Huggins* v. *Ward*, 29 L. T. 33;

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the day of the granting of the same respectively, and all offences heretofore committed against the provisions of the said Acts, or either of them, in relation to slaughter-houses, shall be dealt with in every respect as if this Act had not been passed.

Licensing cow-houses(*a*).

93. From and after the 1st day of November, 1862, no place within any parish or place mentioned in the schedules to the firstly-recited Act shall be used by any person carrying on the business of a slaughterer of cattle (*b*) or cowkeeper or dairyman as a slaughter-house for the purpose of slaughtering cattle or a cow-house or place for the keeping of cows, without a license had for such purpose respectively from the justices of the peace assembled at a special sessions held in the division or district where such slaughter-house, cow-house, or place is situate, and such license shall continue in force for the period of one year from the granting thereof, and thenceforth until the special sessions to be held next after the expiration of such period, and no fee or reward exceeding 5*s.* shall be taken for any such license; and if any person carrying on such business of a slaughterer of cattle, cowkeeper, or dairyman, use as a slaughter-house or cow-house any place within any parish or place mentioned in the schedules of the firstly-recited Act which is not so licensed, every person so offending shall for each offence be liable to a penalty not exceeding £5, of which offence the fact that cattle have been taken into such place shall be deemed sufficient *primâ facie* evidence: Provided always, that before any licence for the use of any place as a slaughter-house (*c*) or cow-house is granted as aforesaid, fourteen

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local jurisdiction of justices in cases of neglect to provide cattle with water, *Johnson* v. *Colam*, 40 J. P. 135; recovery of expenses incurred by local authority under section 57 from owner, *Mills* v. *Scott*, 29 L. T. 96; as to necessity of proving *scienter* in a proceeding for a penalty for an omission to give notice previous to an order of Council, *Nicholls* v. *Hall*, 28 L. T. 483; as to what is an offence within realm of England under section 75 of Act of 1869, where cattle were brought from Cork to New Milford; and as to implied power to justices to convict summarily under the same enactment, *Cullen* v. *Trimble*, L. R. 7 Q. B. 416.

The right of appeal given by section 108 of Act of 1869, was held not to take away right to have a case stated under 20 & 21 Vict. c. 43; *Muir* v. *Hore*, 41 J. P. 421. Held under 11 & 12 Vict. c. 101, that the justices in sessions are precluded from inquiring into the evidence on which a justice had acted in granting a license for the removal of cattle; *Stanhope* v. *Thorsby*, 35 L. J. M. C. 182. As to what was not a false representation, disentitling a person to recover the price of pigs sent to market tainted with typhoid fever, refer to *Ward* v. *Hobbs*. L. R. 3 Q. B. D. (C.A.) 150.

The provisions in relation to slaughter in case of cattle plague and compensation under the Act of 1869, were contained in part V. of that Act, sections 65 to 74 inclusive. The annual report of the metropolitan board for the year 1877, contains a circumstantial narrative of the operations of the board under that Act for that year, with tabular statements showing the outbreaks of cattle plague in the metropolis in the same year, the number of animals slaughtered, the amount of compensation paid to the owners, and other particulars.

(*a*) Cow-houses are hereby subjected to similar rules with respect to licensing, as slaughter-houses. See previous note.

(*b*) The repealed provision referred to places used as "slaughter-houses." The present section alters that expression, and substitutes "any place be used by any person carrying on the business of a slaughterer of cattle, as a slaughter-house, &c."

(*c*) This incorporates the words "by any person carrying on the business of a slaughterer of cattle," occurring in the earlier part of the section.

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days' notice of the intention to apply for such license shall be given to the vestry or district board of the parish or district in which any such place is situate, to the intent that such vestry or district board, if they think fit, may show cause against the granting of any such license, and also seven days' notice previous to such special sessions being held of the intention to apply for such license shall be given to the clerk of the justices for such division: Provided, that nothing in this Act contained shall extend to slaughter-houses erected or to be erected in the metropolitan cattle market under the authority of the Metropolitan Market Act, 1851, or the Metropolitan Market Act, 1857 (*a*).

Month's notice to be given of applying for license for keeping slaughter-house (*b*).

94. Before any license for the keeping or using of any house or place within the metropolitan police district (*c*) as a licensed slaughtering-house or place for the purpose of slaughtering or killing horses or other cattle not killed for butchers' meat shall be granted by any quarter sessions of the peace under the provisions of the Act of the session holden in the twenty-sixth year of the reign of His Majesty King George the Third, chapter seventy-one, or of the Act of the session holden in the seventh and eighth years of her present Majesty, chapter eighty-seven (*d*), or any Act amending either of the said Acts, one month's previous notice of the intention to apply for such license shall be given to the vestry or district board of the parish or district in which such house or place is situate, to the intent that such vestry or district board, if they think fit, may show cause against the grant of such license.

Vestries and district boards to contract for removal of manure from stables or cowhouses

95. It shall be lawful for every vestry and district board, if they i their discretion think fit, to appoint and employ a sufficient number of persons, or to contract with any company or persons, for collecting and removing the manure and refuse straw from such stables and cowhouses within their parish or district, the occupiers of which may signify their consent in writing to such removal; provided that such consent shall not be withdrawn or revoked without one month's previous notice to the vestry or district board, and that no person shall be hereby relieved from any penalty or penalties to which they may be subject for placing dung or manure upon the footways or carriageways of any parish or district, or for having any accumulation or deposit of manure so as to be a nuisance or injurious to health (*e*).

Vestry or district board may require payment of costs or expenses from owner

96. The two hundred and seventeenth, two hundred and eighteenth, and two hundred and nineteenth sections of the firstly-recited Act are hereby repealed; and in lieu thereof be it enacted, that it shall be lawful for any vestry or district board, at their discretion, to require the payment of any costs or expenses which the owner of any premises may be liable to pay under the said recited Act or this Act

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(*a*) The Acts referred to are the 14 & 15 Vict. c. 61, and the 20 & 21 Vict. c. 21.

(*b*) See Slaughter-houses (Metropolis) Act, *post*, Appendix.

(*c*) See as to limits of metropolitan police district 10 Geo. 4, c. 44, s. 4 and schedule, and 2 & 3 Vict. c. 47, s. 2.

(*d*) See 12 & 13 Vict. c. 92.

(*e*) See 57 Geo. 3, c. 29, s. 64, *post*, Appendix, and section 60 of Metropolitan Police Act, 2 & 3 Vict. c. 47, and Nuisances Removal Act, 18 & 19 Vict. c. 121, s. 8, *et seq.*

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or occupier, and occupier paying to deduct from rent (*f*).

either from the owner or from any person who then or at any time thereafter occupies such premises, and such owner or occupier shall be liable to pay the same, and the same shall be recovered in manner authorized by the recited Act and this Act; and the owner shall allow such occupier to deduct the sums of money which he so pays out of the rent from time to time becoming due in respect of the said premises as if the same had been actually paid to such owner as part of such rent: Provided always, that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after such demand of such costs or expenses from such occupier, and after notice (*g*) not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuse, on application being made to him for that purpose by or on behalf of the vestry or district board, truly to disclose the amount of his rent, and the name and address of the person to whom such rent is payable, but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie upon such occupier: Provided also, that nothing herein contained shall be taken to affect any contract made or to be made between any owner and occupier of any house, building or other property whereof it is or may be agreed that the occupier shall pay and discharge all rates, dues, and sums of money payable in respect of such house, building, or other property, or to affect any contract whatsoever between landlord and tenant (*h*).

Agreements between landlord and tenant not to be affected.

Deduction by owner paying rent (*i*)

97. If the owner or landlord of any premises from whose rent any amount shall be deducted in respect of any costs, charges, or expenses payable under the firstly-recited Act or this Act shall hold the premises in respect of which the amount of such costs, charges, or

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(*f*) The 217th section hereby repealed, compelled the vestry, &c., to obtain payment from the occupier; the 218th limited the amount of rent which the occupier should be called on to pay; and the 219th declared that contracts between landlord and tenant with respect to the payment of rates, dues, and sums of money, should remain unaffected. These sections are in substance here re-enacted in this and the following section, with the additional provision that the vestries and district boards may, at their option, proceed against the owner in the first instance. See Metropolitan Board of Works (Loans) Act, 1869.

(*g*) To entitle the occupier to avail himself of this provision, the money must have been actually paid, and a distress which became due after service of notice from a vestry, but before payment, is not illegal; *Ryan* v. *Thompson*, L. R. 3 C. P. 144; 37 L. J. C. P. 124. Judgment against a former owner for paving expenses is no bar to an action against defendant who occupied the premises as tenant to a succeeding owner; *Vestry of Bermondsey* v. *Ramsay*, L. R. 6 C. P. 247.

(*h*) Where the lessee covenanted to discharge all taxes, rates, duties, and assessments which should be taxed, assessed, or imposed upon the tenant or landlord, and the vestry assessed a portion of the expenses of paving a new street upon the owner, it was held that this was "a duty or assessment" within the covenant; *Thompson* v. *Lapworth*, L. R. 3 C. P. 149. A tenant who has been compelled to pay the proportion of the expenses of a party-wall or structure, payable under Metropolitan Building Act, 1855, by his landlord, may deduct from rent due to owner, or may recover in an action *Earle* v. *Maugham*, 14 C. B. (N.S.) 626; 10 Jur. (N.S.) 208.

(*i*) This enables the person in immediate receipt of the rack-rent to deduct a proportionate amount of those expenses, when he himself, as is

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where amount of expenses deducted from rent paid to him.

expense shall be paid at a rent not less than the rackrent, he shall be entitled to deduct the whole amount paid by him on account of such costs, charges or expenses from the rent payable by him to his superior landlord; and if he holds at a rent less than the rackrent, he shall be entitled to deduct from the rent so payable by him a sum bearing the same proportion to the amount so paid by him on account of such costs, charges, or expenses as his rent shall bear to the rackrent; and if the owner or landlord from whose rent any deduction be made under the provision last aforesaid be himself liable to the payment of rent for the premises in respect of which the deduction shall be made, and hold such premises for a term of which less than twenty-one years shall be unexpired, but not otherwise, he may deduct from the rent so payable by him a sum bearing the same proportion to the sum deducted from the rent payable to him as the rent payable by him shall bear to the rent payable to him, and so on in succession with respect to every landlord of the same premises both receiving and liable to pay rent in respect thereof, and holding the same for a term of which less than twenty-one years shall be unexpired as aforesaid: Provided always, that nothing herein contained shall be construed to entitle any person to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him: Provided also, that nothing herein contained shall be taken to affect any contract (*a*) made or to be made between any owner or occupier of any house, building, or other property whereof it is or may be agreed that the occupier shall pay and discharge all rates, dues, and sums of money payable in respect of such house, building, or other property, or to affect any contract whatsoever between landlord and tenant.

Roads, &c., laid out as streets to be of full width of forty feet for carriage traffic, and twenty feet for foot traffic (*c*).

98. No existing (*b*) road, passage or way being of a less width than forty feet shall be hereafter formed or laid out for building as a street for the purposes of carriage traffic, unless such road, passage, or way be widened to the full width of forty feet, the measurement of the width of such street to be taken half on either side from the centre or crown of the roadway to the external wall or front of the houses or

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frequently the case, pays rent. A similar provision was contained with respect to the payment of special and improvement rates under the Metropolitan Sewers Act, 1848, 11 & 12 Vict. c. 112, s. 88.

(*a*) See, as to contracts between owners and occupiers, note to section 219 of 18 & 19 Vict. c. 120, *ante*.

(*b*) This section applies to newly-formed roads as well as to roads existing at the time of the passing of the Act; *R.* v. *Baker*, 34 J. P. 823.

(*c*) The power of making bye-laws conferred upon the metropolitan board by the 202nd section of 18 & 19 Vict. c. 120, is for regulating the plans, level, &c., of *new* streets and roads, and the bye-laws promulgated by the board in pursuance of this authority applies to *new* streets only. This provision subjects to the same incidents as attach to new streets, old roads, and lanes newly laid out for building, and represses the mischief arising from building in narrow and ill-ventilated situations. By the Metropolis Management and Building Acts Amendment Act, 1878, *post*, Appendix (by section 5 to be construed as one Act with Metropolis Local Management Act, 1855, and the amending Acts), it is enacted by section 6 that no house or building shall be constructed, or begun to be constructed, and no house or building shall be extended or begun to be extended, in such manner that the external wall or front shall be at less than the prescribed distance from the centre of the roadway, without the consent in writing of the board. See section 4 for the interpretation of term "pre-

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buildings erected or intended to be erected on each side thereof (*d*); but where forecourts or other spaces are intended to be left in front of the houses or buildings, then the width shall be measured up to the fence or boundary dividing or intended to divide such forecourts or spaces from the public way, or for the purposes of foot traffic only, unless such road, passage, or way be widened to the full width of twenty feet, measured as aforesaid, or unless such streets respectively shall be open at both ends, from the ground upwards; and any road, passage, or way hereafter to be formed or laid out for either of the purposes aforesaid shall be deemed to be a new street, and become subject to all the provisions of the recited Acts and this Act (*e*), and to the provisions and penalties of and under any bye-laws made or to be made in pursuance thereof in relation to sewerage, drainage, or paving, and to width, construction, surface, inclination, and other requirements and particulars.

Metropolitan board may permit formation of streets of less width, &c.

99. Provided that it shall be lawful for the metropolitan board of works to permit the formation of any such street of less width than hereinbefore provided, or with one opening only, should they under any special circumstances deem it equitable and expedient so to do.

Power to vestries, &c., to borrow moneys for the improvement of streets (*f*).

100. It shall be lawful for every vestry and district board mentioned in clause one hundred and eighty-three of the first recited Act to exercise the power to borrow moneys therein mentioned, with the sanction of the metropolitan board of works granted under their common seal, for the purpose of enabling such vestry or district board to make, extend, widen, alter or improve any street, road, or way, for facilitating the passage and traffic within the parish or dis-

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scribed distance"; and section 10 of same Act provides, subject to certain conditions, that no street, &c., shall be formed for foot traffic without the consent of a justice, unless the space opened for foot traffic and carriage traffic be widened to the full width of 40 feet.

(*d*) Where a magistrate found that the defendant, by erecting a permanent fence in a lane 28 feet wide, near his plot, did begin to lay out and form the road as a street for carriage traffic and that this 98th section only required a widening of the road to 20 feet from its centre to the defendant's boundary fence, and convicted him, the conviction was sustained; *Taylor* v. *Metropolitan Board of Works*, L. R. 2 Q. B. 13; but where the respondent had done no act towards laying out a lane as a street for carriage traffic otherwise than by the removal of an old bank and fence, and substituted a new fence within his own land, it was held he was not bound to set back his fence so as to leave a space between it and the centre of the lane, and had committed no offence; *Metropolitan Board of Works* v. *Clewer*, L. R. 3 C. P. 531. Under a bye-law of the Birkenhead Improvement Commissioners requiring an open space of a certain extent between a building and the opposite property, the distance is to be measured from any and every part of the building, and it is not sufficient that some part of the building is at the specified distance; *Anderton* v. *Birkenhead Improvement Commissioners*, 32 L. J. M. C. 137.

(*e*) See sections 105 and 202 of 18 & 19 Vict. c. 120, *ante*, and sections 52 and 77 of this Act.

(*f*) This empowers vestries and district boards to borrow moneys for the purpose of effecting the improvements mentioned in the 72nd section. See note to that section, *ante*; and see as to loans by metropolitan board to vestries, district boards, &c., under the 34 & 35 Vict. c. 47, and other Acts, referred to in notes to section 183 of 18 & 19 Vict. c. 120, *ante*.

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trict for which such vestry or district board is appointed, or for the purpose of contributing to and of joining with the metropolitan board or with any other board or persons in any such improvement.

Any vestry or district board may put an end to any powers of appointment of inspectors of weights and measures existing under any local Act in their parish or district.

101. If any vestry, commissioners, or other body in whom any duties or powers in relation to the appointment of inspectors or examiners of weights and measures are now vested under any local Act, charter, or otherwise, desire that such duties or powers should cease, and that inspectors of weights and measures appointed or to be appointed at general or quarter sessions, pursuant to the provisions of the Act of the session holden in the fifth and sixth years of King William the Fourth, chapter sixty-three (*a*), and of any Act amending the same, should act in and for the parts to which such local Act extends, so far as regards their parish or district, and a resolution to that effect be passed by a majority (*b*), at a meeting of the vestry or board specially convened for the purpose of considering the question of determining such duties or powers, of which not less than fourteen days' notice shall have been given, notice of such resolution shall be given by the clerk of such vestry or board to the clerk of the peace for the county in which their parish or district is situate ; and such notice shall be laid by such clerk of the peace before the next court of general or quarter sessions of the peace for such county ; and from and after the receipt of such resolution by such justices the appointment, and all powers of appointment, of any inspector or examiner appointed under any such local Act shall cease so far as regards such parish or district, but not so as to affect any pending proceedings for penalties or otherwise ; and all the provisions of the said Act at the session holden in the fifth and sixth years of King William the Fourth, chapter sixty-three, and of any Act amending the same, shall apply to such parish or district as if such local Act were not in force therein.

Penalties may be recovered in manner provided by 11 & 12 Vict. c. 43 (*c*).

102. Every penalty or forfeiture imposed by this Act, and made recoverable by a summary proceeding, may be recovered before any justice of the peace in manner provided by the Act of the session holden in the eleventh and twelfth years of Her Majesty, chapter forty-three.

(*a*) See 5 & 6 Will. 4, c. 63, s. 17 *et seq.*, as to the appointment, &c., of inspectors of weights and measures, and as to the districts for which examiners of weights and balances might be appointed under the earlier Act, 37 Geo. 3, c. 143. *R.* v. *Justices of Devon*, 1 B. & Ald. 588. By the Weights and Measures Act, 1878, (6th sched., part 1), this section is repealed. By section 55 of the Act where, in the metropolis, any vestry, commissioners, or other body have powers, &c., under any local Act, charter, or otherwise, in relation to the apppointment of inspectors or examiners of weights and measures, such vestry, commissioners, or body may at a meeting specially convened for the purpose, of which not less than fourteen days' notice has been given, resolve that it is expedient that their said duties and powers should cease in such a place.

(*b*) See *R.* v. *Overseers of Christchurch*, cited and observations in note to section 28 of 18 & 19 Vict. c. 120, *ante*, as to what constitutes a majority.

(*c*) See 18 & 19 Vict. c. 120, *ante*, as to recovery of penalties by summary proceedings under Jervis' Act, 11 & 12 Vict. c. 43. The penalties for any breach of the bye-laws under section 83, *ante*, are, by virtue of that section, and section 202 of 18 & 19 Vict. c. 120, recoverable by a similar proceeding. The Small Penalties Act, 1865, 28 & 29 Vict. c. 32, enacts

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Expenses of obtaining this Act to be included among general expenses of executing Acts.

103. The expenses incurred by the metropolitan board of works in applying for and passing this Act, and preparatory or incident thereto, shall be and are hereby included among the general expenses of the said board in the execution of the firstly-recited Act, and may be defrayed accordingly; and the expenses incurred by any vestry or district board in relation to this Act shall be and are hereby included among the other expenses incurred by that vestry or district board in the execution of the firstly-recited Act, and may be defrayed accordingly.

Provision as to penalties under 227th section of 18 & 19 Vict. c. 120, extended to damages, &c.

104. The provisions in the two hundred and twenty-seventh section of the firstly-recited Act for the recovery of penalties and forfeitures imposed by the said Act is hereby extended to any damages, costs, or expenses payable or recoverable under the said recited Acts or this Act; and any such damages, costs, or expenses, the recovery whereof is not otherwise provided for, may be recovered by summary proceedings in manner directed by the said section (*d*).

Application of penalties (*e*).

105. The two hundred and thirty-fourth section of the firstly-recited Act is hereby repealed; and in lieu thereof be it enacted, that all penalties or forfeitures payable or recoverable under the firstly-recited Act or this Act, and all penalties or forfeitures recovered by any vestry or district board acting as the local authority for the execution within their respective parish or district of "The Nuis-

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that where upon summary conviction any offender may be adjudged to pay a penalty not exceeding £5, such offender may, without any warrant of distress, be committed to prison for any term not exceeding the period specified in the scale given in the Act, unless the penalty shall be sooner paid; and the Act applies to penalties, including costs recoverable in a summary manner, in pursuance of any Act of parliament, whether passed before or after its commencement.

(*d*) Where a local board had the option of recovering the expenses of sewering and paving a private street, either in the county court or by a summary proceeding before justices, it was held that the six months' limitation in Jervis' Act applied to both proceedings; *Tottenham Local Board of Health* v. *Rowell*, L. R. 1 Ex. D. C. A. 514.

(*e*) The 234th section of 18 & 19 Vict. c. 120 (hereby repealed), provided that all sums which might be recovered by any vestry on account of any penalty, should be applicable to their general expenses; but by section 47 of 2 & 3 Vict. c. 71 (Metropolitan Police), it was enacted that where by any Act or Acts any penalties, &c., were or should thereafter be made recoverable in a summary manner before any justice, &c., and by such Act or Acts the same should be made payable to Her Majesty, or to any body corporate, or to any person or persons whomsoever, save the informer, &c., or any party aggrieved, the same, if recovered before any of the metropolitan police magistrates, should be adjudged to be paid to the receiver of the metropolitan police district. It was held under the 17 & 18 Vict. c. 38 (Suppression of Gaming Houses), that where a conviction took place under that Act at a metropolitan police court, the receiver of the metropolitan police district was entitled to one half of the penalty directed by the Act to be applied in aid of the poor rates; *Wray* v. *Ellis*, 28 L. J. M. C. 45. The section as now framed is intended to secure the penalty to those bodies whose property has been injured by the offence, including the metropolitan board, who were not within the repealed enactment. See *Receiver of Metropolitan Police* v. *Bell*, L. R. 7 Q. B. 433, as to what penalties recovered before two justices were held not payable to the receiver, and as to disability of a corporation to sue for penalties as a common informer unless expressly empowered by statute; *Guardians of St. Leonard's Shoreditch* v. *Franklin*, L. R. 3 C. P. D. 377.

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ances Removal Act, for England, 1855" (*a*), shall go and be paid in manner hereafter mentioned, anything contained in an Act made and passed in the session holden in the second and third years of the reign of Her present Majesty, chapter seventy-one, or in any other Act or Acts to the contrary notwithstanding; that is to say, one half shall go to the informer, and the remainder shall go to the vestry or district board of the parish or district in which the offence was committed, or to the metropolitan board of works, in case the injury shall have been sustained by or the offence committed in respect of that board; or if such vestry or district board or the metropolitan board of works be the informers, then the whole of the penalty recovered shall go to them respectively, and all sums which shall go to or be recovered by any board or vestry on account of any penalty or forfeiture shall be paid to their treasurer, or into such bank to their account as they may direct, and shall be applicable towards the general expenses of such board or vestry; provided that in every case where any board or vestry are liable to any penalty or forfeiture, the whole of such penalty or forfeiture shall go to the informer.

Notice of action, &c. (*b*).

106. No writ or process shall be sued out against or served upon, and no proceeding shall be instituted against the metropolitan board of works, or any vestry or district board, or their clerk, or any clerks, surveyor, contractor, officer, or person whomsoever, acting under their or any of their directions, for anything done or intended to be done under the powers of such board or vestry under the said Acts or this Act (*c*), until the expiration of one calendar

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(*a*) See 18 & 19 Vict. c. 121, s. 38, *post*, Appendix.

(*b*) This section is founded on the 127th section of the Metropolitan Sewers Act, 1848, 11 & 12 Vict. c. 112, but in addition to the words "writ or process shall be sued out," it uses the words "no proceeding shall be nstituted."

(*c*) An omission to do something to be done for the complete performance of a duty imposed on a public body by statute, or continuing to leave such duty unperformed, amounts to an Act done or intended to be done within the meaning of section 139 of the Public Health Act, 1848; *Jolliffe* v. *Wallasey Local Board*, L. R. 9 C. P. 62.

Where an inspector was ordered by a district board of works within the metropolis to erect a urinal, and he authorized another person to perform the work, the latter, as well as the inspector, was held entitled to notice of action; *Chambers* v. *Reid*, 30 J. P. 231; 13 L. T. (N.S.) 703.

A contractor under the metropolitan commission of sewers who, in enlarging a sewer, neglected to pump the sewage, thereby flooding the plaintiff's premises, was held entitled to notice of action; *Poulsum* v. *Thirst*, 36 L. J. C. P. 225; L. R. 2 C. P. 449.

A person who contracted with a local board of health to dig wells under the direction of their surveyor, and caused damage by leaving a hole without a light at night, was held entitled to notice of action under section 264 of Public Health Act, 1875; *Newton* v. *Ellis*, 24 L. J. Q. B. 337; 5 E. & B. 115.

A local board sued for negligence in not protecting a footpath from a goit, was held entitled to notice of action; *Wilson* v. *Corporation of Halifax*, 37 L. J. Ex. 44; L. R. 3 Ex. 114, and similarly in case of accident from a defective bridge; *Holland* v. *Nantwich Highway Board*, 34 L. T. 137.

Although a rate made by defendants as surveyors of highways was bad, the defendants were held entitled under section 109 of the General High-

month (*d*) next after notice in writing shall have been served upon such board or vestry, or where the action or proceeding shall be against such officer or other person acting under their or any of their directions shall have been delivered to him or left at his office or place of abode, stating the cause of action or grounds of the proceeding or demand, and the name and place of abode of the intended plaintiff or claimant and of his attorney or agent in the cause or proceeding; and upon the trial of any action the plaintiff shall not be permitted to go into evidence of any cause or action except such as is stated in the notice so served or delivered, and unless such notice be proved the jury shall find for the defendant; and every such action and proceeding shall be brought or commenced within six months (*e*) next after the

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way Act to notice of an action brought to recover the money paid; *Selmes* v. *Judge*, L. R. 6 Q. B. 724.

In order to entitle a party to notice of action for a thing done, "in pursuance of" or "in the execution of" an Act of parliament, it is not necessary that he should at the time of doing the act be cognisant of the existence of the statute giving him such protection, or that he should be acting strictly in the execution of it; *Read* v. *Coker*, 13 C. B. 850.

A letter of plaintiff's attorney claiming compensation, is not sufficient notice; *Mason* v. *Birkenhead Improvement Commissioners*, 29 L. J. Ex. 407.

Where the servant of the defendant, a contractor under a metropolitan district board of works, left a horse unattended which ran away causing damage; held, that this was not "a thing done, &c." under the powers f the board requiring notice of action; *Whatman* v. *Pearson*, L. R. 3 C. P. 422.

A person who, being called upon by the metropolitan board to make a drain to his premises, committed a trespass, was held not entitled to notice of action; *Doust* v. *Slater*, 38 L. J. Q. B. 159.

No notice is required where the action is for the breach of a contract; *Davies* v. *Corporation of Swansea*, 8 Ex. 808.

In an action against defendant for negligently performing work, it was held that defendant did not come within the words "other person" in the 18th section of Metropolis Building Act, 1855, and was not entitled to notice of action; *Williams* v. *Golding*, 35 L. J. C. P. 1.

(*d*) Under an Act requiring one calendar month's notice of action, a notice having been given on the 28th of a month, it was held that an action might be commenced on the 29th of the following month whatever the length of the preceding month; *Freeman* v. *Read*, 32 L. J. Q. B. 322.

The provision in this section does not affect the rights of a riparian owner whose stream is being polluted by the works of a district board, to summary relief by information; *Attorney-General* v. *Hackney District Board*, L. R. 20 Eq. 626.

In a proceeding to restrain a nuisance by a local sanitary authority by drainage into an open watercourse, the notice prescribed by the Public Health Act, 1875, is not necessary; *Baker* v. *Corporation of Wisbeach*, L. R. W. N. (1877), p. 56; the jurisdiction granting summary relief by injunction is not altered by the Judicature Act; *Ibid.*

A month's notice of action under the Public Health Act, 1875, is not necessary where the principal object of the action is an injunction to restrain immediate injury. Where plaintiff's case showed compensation for damage to be the principal object, notice of action is necessary; *Flower* v. *Local Board of Low Leighton*, L. R. 5 Ch. Div. (C. A.) 347.

(*e*) It is not necessary that a notice of claim and demand for arbitration for damage done to a building should be made within six months' after the occurrence of the damage; *Delany* v. *Metropolitan Board of Works*, L. R. 2 C. P. 532; 3 C. P. (Ex. Ch.) 111.

And as to when cause of action arises, see *Bonomi* v. *Backhouse*, 28 L. J. Q. B. 378; *Whitehouse* v. *Fellowes*, 10 C. B. (N. S.) 765.

Section 106. accrual of the cause of action or ground of claim or demand, and not afterwards, and every such action shall be laid and tried in the county or place where the cause of action accrued (*a*), and not elsewhere; and the defendant shall in any such action be at liberty to plead the general issue, and give the said recited Acts and this Act and all special matter in evidence thereunder; and it shall be lawful for the board or vestry, or any person to whom such notice is given as aforesaid, to tender amends to the plaintiff, his attorney or agent, at any time within one calendar month after service of such notice, and in case the same be not accepted to plead such tender in bar, and (by leave of the court) with the general issue or other plea or pleas; and if upon issue joined upon any plea pleaded to the whole action the jury find generally for the defendant, or if the plaintiff be nonsuited or discontinue, or if judgment be given for the defendant, then the defendant shall be entitled to full costs of suit, and have judgment accordingly; and in case the amends tendered be insufficient, it shall be lawful for the defendant, by leave of the court, at any time before trial, to pay into court under plea such sum of money as he may think proper, and (by the like leave) to plead the general issue or other plea or pleas, any rule of court or practice to the contrary notwithstanding.

Venue.

General issue.

Tender of amends.

Penalties to be proceeded for within six months (*b*).

107. The two hundred and thirty-third section of the firstly-recited Act is hereby repealed; and in lieu thereof be it enacted, that no person shall be liable for the payment of any penalty or forfeiture under the recited Acts or this Act, or any bye-law made by virtue thereof, for any offence made cognizable before a justice, unless the complaint respecting such offence have been made before such justice within six months next after the commission or discovery of such offence.

(*a*) An enactment in similar terms in the 11 & 12 Vic. c. 63, was decided not to deprive a court or judge of their common law power to change the venue if the ends of justice required it; *Itchin Bridge Company* v. *Southampton Local Board*, 8 E. & B. 803.

See now Supreme Court of Judicature Act, 1875, order 36, rule 1, enacting that there shall be no local venue for the trial of any action, but when the plaintiff proposes to have the action tried elsewhere than in Middlesex, he shall in his statement of claim name the county or place in which he proposes that the action shall be tried, and the action shall, unless a judge otherwise orders, be tried in the county or place so named.

(*b*) There was a contradiction betwen the text of the repealed section and the marginal note, the former mentioning three, and the latter six months, as the period within which the complaint must have been made.

Where a local Act empowered justices to make an order for the demolition of a building erected contrary to the directions of a corporation, it was decided that the complaint must have been made within six months from the completion of the building, as required by the 11th section of 11 & 12 Vict. c. 43; *Morant* v. *Taylor*, 45 L. J. M. C. 78; L. R. 1 Ex. Div. (C.A.) 188. But in *Vestry of Bermondsey* v. *Johnson*, L. R. 8 C. P. 441, it was held that this limitation did not apply to an offence under section 76 of the Metropolis Management Act, 1855, which only relates to pecuniary penalties or forfeitures; and for encroaching on a highway by a building or fence, under 27 & 28 Vict. c. 101, s. 51, within six months from the completion of the building or fence; *Coggin* v. *Bennett*, L. R. 2 C. P. D. 568.

An adjudication of a justice as to the value of an interest in land under sections 22, 24, of Lands Clauses Consolidation Act, is not an order for the

Section 108.

108. Except as herein specially provided, nothing herein contained shall in any way prejudice or affect any act, matter, or thing made, done, or commenced prior to the passing of this Act (*c*).

Act not to apply to things done before its passing, except, &c.

109. Nothing in this Act contained shall be held to make the several places named in schedule (C.) of the firstly-recited Act liable to any payment or assessment to which they would not have been liable if this Act had not been passed.

No further liability to attach to places named in sched. (C.) of 18 & 19 Vict. c. 12,

110. The said recited Acts and this Act shall be construed together as one Act.

Acts to be construed as one Act.

111. The recited Acts may be respectively cited for all purposes as "The Metropolis Management Act, 1855," "The Metropolis Management Amendment Act, 1856," and "The Metropolis Management Act, 1858;" and this Act may be cited for all purposes as "The Metropolis Management Amendment Act, 1862."

Short titles.

112. In the construction of the recited Acts and this Act the term "metropolis" shall be deemed to include the city of London and the parishes and places mentioned in the schedules (A.), (B.), and (C.) to the firstly-recited Act; the word "drain" shall be deemed to apply to and include the subject matters specified in the two hundred and fiftieth section of the firstly-recited Act, and also any drain for draining a group or block of houses by a combined operation, laid or constructed before the 1st day of January, 1856, pursuant to the order or direction or with the sanction or approval of the metropolitan commissioners of sewers (*d*); the expression "water company" shall mean and include any of the companies enumerated in the twenty-ninth section of the Act of the session of the fifteenth and sixteenth years of the reign of Queen Victoria, chapter eighty-four, for the making better provision respecting the supply of water to the metropolis, and also any other company, board, or commission, association, person, or partnership, corporate or unincorporate, for the time being supplying the metropolis or any part thereof with water for domestic use; the word "cattle" shall include sheep, lambs, and swine; the word "street" shall be deemed to apply to and include the subject matters specified in the two hundred and fiftieth section of the firstly-

Interpretation of terms.

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payment of money within 11 & 12 Vict. c. 43, s. 11; and the six months' limitation does not apply; *R.* v. *Hannay*, 44 L. J. M. C. 27.

See also *Jacombe* v. *Dodgson*, 32 L. J. M. C. 113; *Sweetman* v. *Guest*, 37 L. J. M. C. 59; *R.* v. *Edmundson*, 17 Q. B. (N.S.) 67.

As to what is a continuing offence making the limitation inapplicable, see *Higgins* v. *Northwich Union*, 22 L. T. (N.S.) 752.

(*c*) A notice of rate was held to be "a thing done," within Public Health Act, 1875, section 343; *R.* v. *Justices of West Riding of Yorkshire*, 4 L. R. 1 Q. B. D. 220; and *Barnes* v. *Eddleston*, L. R. 1 Ex. D. 102.

(*d*) The definition of the word "drain," section 250 of the Metropolis Management Act, 1855, *ante*, included the drainage of a block of houses by a combined operation under the order of any vestry or district board, but did not extend to combined drainage laid down before the passing of that Act. That species of drainage, therefore, came within the definition of the word "sewer" in the section referred to, and as such would probably have been maintainable by vestries and district boards out of the public rates. The new definition declares them to be drains, and, as a consequence, subjects them to the incidents applicable to private works.

Section 112.

recited Act, and also any mews and a part thereof; the expression "new street" shall apply to and include all streets hereafter to be formed or laid out, and a part of any such street, and also all streets, the maintenance of the paving and roadway whereof, had not, previously to the passing of this Act, been taken into charge and assumed by the commissioners, trustees, surveyors, or other authorities having control of the pavements or highways in the parish or place in which such streets are situate, and a part of any such street, and also all streets partly formed or laid out; the word "pave" shall apply to and include the formation of the roadway or footway of any street; the word "clerk" shall include any officer called or to be called "secretary;" the word "surveyor" shall include any officer called or to be called "engineer;" the word "print" shall apply to and include every mode of taking impressions, whether by letter press, stereotype, lithography, or otherwise.

Finsbury Park Act, continued till 1863 (*a*).

113. Whereas an Act was passed in the session of parliament holden in the twentieth and twenty-first years of Her Majesty, "to enable the Metropolitan Board of Works to form a Park for the Northern Suburbs of the Metropolis, to be called Finsbury Park:" and whereas it is expedient to continue the said Act for such period as herein mentioned: Be it therefore enacted, that the said Act shall be continued in force until the 17th day of August, 1863, in like manner as if the time so limited had been the time limited by the said Act of the twentieth and twenty-first years of Victoria, chapter one hundred and twenty.

Amendment of 18 & 19 Vict. c. 120, s. 193.

114. There shall be repealed so much of the one hundred and ninety-third section of an Act passed in the session holden in the eighteenth and nineteenth years of the reign of Her present Majesty, chapter one hundred and twenty, intituled "An Act for the better Local Management of the Metropolis," as provides that the auditor of the accounts of the metropolitan board shall be paid by such board not exceeding five guineas for every day he is fully employed on such audit, and all expenses he is put to in the auditing of such accounts; provided always, that such payment shall not exceed fifty guineas: and in lieu thereof, be it enacted, that the auditor of the accounts of the metropolitan board shall be paid by such board a sum not exceeding two guineas for every day that he is fully employed on such audit, and all expenses that he is put to in the auditing of such accounts, provided that such payments do not in the whole exceed one hundred guineas (*b*).

Certain powers under Local Act 10 Geo. 4, c. 68, respecting parish

115. From and after the passing of this Act all duties, powers, and authorities under the Local Act of the tenth year of George the Fourth, chapter sixty-eight, now remaining vested in the committee of management of the affairs of the parish of Saint Paul, Covent Garden, shall cease to be so vested, and shall become vested in and

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(*a*) By the 27th section of that Act, the powers for the compulsory purchase of land could not be exercised after the expiration of five years from its passing, 17th August, 1857.

(*b*) By the Metropolis Local Management Amendment Act, 1858 (21 & 22 Vict. c. 104), s. 8, the auditor is required to cause to be prepared a separate abstract and statement of the expenditure under that Act; and a similar provision is contained in 25 & 26 Vict. c. 93, Thames Embankment, and other Acts. By the Metropolitan Board of Works (Loans) Act, 1875, section 15, the auditor is to be paid a fee not exceeding 100 guineas.

be performed and exercised by the vestry of such parish, elected under the Act of the eighteenth and nineteenth years of Victoria, chapter one hundred and twenty, and that the said committee shall cease and be determined, and no new appointment or election of such committee shall take place.

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of Saint Paul, Covent Garden, transferred.

Saving rights of the crown and the duchy of Lancaster.

116. It shall not be lawful for the metropolitan board of works, or for any vestry or district board, to take, use, or in any manner interfere with any land, soil, tenements, or hereditaments, or any rights, of whatsoever nature, belonging to or enjoyed or exercisable by the Queen's most excellent Majesty in right of her crown, or in right of the duchy of Lancester, without the consent in writing of the commissioners for the time being of Her Majesty's woods, forests, and land revenues, or one of them, on behalf of Her Majesty, first had and obtained for that purpose, which consent such commissioners are hereby respectively authorized to give, or without the consent in like manner of the chancellor of the said duchy; and nothing herein contained shall divest, take away, prejudice, diminish, or alter any estate, right, privilege, power, or authority vested in or enjoyed or exercisable by the Queen's majesty, her heirs or successors, in right of her crown or in right of her duchy of Lancaster: Provided always (*c*) that nothing herein contained shall in any way lessen, alter, or in any manner prejudice or affect the rights, powers, and authorities of the metropolitan board of works relating to the main drainage of the metropolis, but such rights, powers, and authorities may be put in force as if this section had not been passed.

Saving rights of the crown in respect of the duchy of Cornwall.

117. It shall not be lawful for the metropolitan board of works, or for any vestry or district board, to take, use, or in any way interfere with any land, soil, tenements, or hereditaments, or any rights, of whatsoever nature, belonging to or enjoyed or exercisable by the Queen's most excellent Majesty in right of her duchy of Cornwall, without the consent in writing of two or more of the principal officers of the duchy, which consent such principal officers of the duchy are hereby authorized to give; and nothing herein contained shall divest, take away, prejudice, diminish, or alter any estate, right, privilege, power, or authority vested in or enjoyed or exercisable by the Queen's Majesty, her heirs or successors, in respect of the said duchy: Provided always, that nothing herein contained shall in any way lessen, alter, or in any manner prejudice or affect the rights, powers, and authorities of the metropolitan board of works relating to the main drainage of the metropolis, but such rights, powers, and authorities may be put in force as if this section had not been passed (*d*).

(*c*) This proviso refers to the power of constructing works for the purposes of the main drainage under the bed and soil of the river Thames, given by the 2nd section of 21 and 22 Vict. c. 104, subject to the conditions imposed by the 27th and 28th sections of the same Act. See Thames Conservancy Act, 1857, as to the rights of the crown in respect of the foreshore of the Thames.

(*d*) See note to last section.

SCHEDULES TO WHICH THIS ACT REFERS.

SCHEDULE (A.)

LIST OF CERTAIN SECURITIES AND LIABILITIES OF METROPOLITAN COMMISSIONERS OF SEWERS.

Name of Lender, Party holding Security, or for whose Life Annuity granted.	Amount of Loan or Value of Annuity. £	s.	d.	Date of Loan or Grant of Annuity.
John Newberry George	3,000	0	0	11th April, 1823.
Mary Robinson	2,000	0	0	12th March, 1824.
G. B. Hart (executors of)	1,000	0	0	"
B. D. Kershaw	1,000	0	0	"
Rev. E. D. Kershaw	1,000	0	0	"
Samuel Kershaw	2,000	0	0	4th June, 1824.
T. W. Meller (executors of)	3,000	0	0	12th Dec. 1828.
Do. (do.)	9,500	0	0	13th January, 1832.
J. Hicks (executors of)	5,000	0	0	8th March, 1833.
John Hobbs	2,000	0	0	27th May, 1840.
J. G. Hall	1,500	0	0	10th Sept. 1847.
Helena Balcombe (trustees of)	1,500	0	0	"
Philip Green	1,000	0	0	"
James Courthope Peache	10,000	0	0	2nd May, 1851.
Royal Exchange Assurance Corporation	20,000	0	0	17th Sept. 1852.
Rock Life Assurance Company	228,800	0	0	Between 1st March, 1854, and 1st Feb. 1855.
ANNUITIES.				
(Estimated value, 1st Jan, 1856.				
Charlotte Swabey	210	10	0	19th April, 1816.
William Edwards	961	18	7	12th April, 1822.
Sarah Dorothy Woodfield	85	19	0	10th October, 1823.
Louisa Turner	1,039	11	4	"
Sarah Dorothy Hunt	217	13	11	27th August, 1824.
Maria Woodroffe	259	13	11	22nd October, 1824.
Carolina Jeremy	544	3	8	28th July, 1826.
Margaret Symons	70	4	2	
TOTAL £	295,689	14	7	

SCHEDULE (B.)

Apportionment of Debt on Loan from the Clergy Mutual Assurance Society.

Parishes and Places.	Amount charged on each Parish or Part.	
	£ s. d.	£ s. d.
Saint Marylebone	- - -	10,563 0 3
Saint Pancras	- - -	746 4 7
Lambeth	- - -	5,181 16 6
Saint George, Hanover Square	- - -	9,449 0 3
Saint Mary, Islington	- - -	4,618 18 9
Saint Leonard, Shoreditch	- - -	2,658 15 6
Paddington	- - -	4,544 19 0
Saint Matthew, Bethnal Green	- - -	1,103 13 8
Saint Mary, Newington, Surrey	- - -	2,008 4 8
Camberwell	- - -	2,219 12 6
Saint James, Westminster	- - -	4,348 6 3
Saint James and Saint John, Clerkenwell	- - -	2,274 5 0
Chelsea	- - -	2,290 7 2
Saint Mary Abbotts, Kensington	- - -	2,560 17 2
Saint Luke, Middlesex	- - -	1,726 0 6
Saint George the Martyr, Southwark	- - -	1,317 12 3
Bermondsey	- - -	1,391 12 0
Saint George in the East	- - -	1,754 11 5
Saint Martin in the Fields	- - -	2,642 8 3
Hamlet of Mile End Old Town	- - -	1,589 2 6
Rotherhithe	- - -	676 9 2
Saint John, Hampstead	- - -	814 2 4
Whitechapel District.		
Saint Mary, Whitechapel	1,139 14 1	
Christchurch, Spitalfields	370 13 2	
Saint Botolph Without, Aldgate	488 1 11	
Holy Trinity, Minories	63 0 4	
Precinct of Saint Katharine	169 2 3	
Hamlet of Mile End New Town	149 13 4	
Liberty of Norton Folgate	81 18 8	
Old Artillery Ground	42 8 11	
District of the Tower	28 17 6	
		2,533 10 2
Westminster District.		
Saint Margaret and Saint John the Evangelist	- - -	2,695 5 2
Greenwich District.		
Saint Paul, Deptford, including Hatcham	1,048 3 10	
Saint Nicholas, Deptford	211 7 10	
Greenwich	1,268 7 2	
		2,527 18 10
Wandsworth District.		
Clapham	871 19 11	
Tooting Graveney	103 15 8	

Sched. (B.)

Parishes and Places.	Amount charged on each Parish or Part.					
	£	s.	d.	£	s.	d.
Wandsworth District—*continued.*						
Streatham	514	14	10			
Saint Mary, Battersea, excluding Penge	836	1	2			
Wandsworth	464	0	2			
Putney, including Roehampton	369	19	9			
				3,160	11	6
Hackney District.						
Hackney	2,451	0	4			
Saint Mary, Stoke Newington	283	7	10			
				3,734	8	2
Saint Giles District.						
Saint Giles in the Fields and Saint George, Bloomsbury				2,772	2	5
Holborn District.						
Saint Andrew, Holborn above Bars, and Saint George the Martyr	1,395	3	10			
Saint Sepulchre, in the county of Middlesex	187	11	10			
Saffron Hill, &c.	294	11	4			
Liberty of Glasshouse Yard	38	9	11			
				1,915	16	11
Strand District.						
Saint Anne, Soho	958	7	5			
Saint Paul, Covent Garden	458	17	10			
Precinct of the Savoy	90	9	6			
Saint Mary-le-Strand	157	1	4			
Saint Clement Danes	897	15	9			
Liberty of the Rolls	169	18	4			
				2,732	10	2
Fulham District.						
Saint Peter and Saint Paul, Hammersmith	713	9	0			
Fulham	501	19	6			
				1,215	8	6
Limehouse District.						
Saint Anne, Limehouse	586	7	3			
Saint John, Wapping	373	11	6			
Saint Paul, Shadwell	325	12	7			
Hamlet of Ratcliffe	463	14	3			
				1,749	5	7
Poplar District.						
All Saints, Poplar	1,637	9	10			
Saint Mary, Stratford-le-Bow	286	1	2			
Saint Leonard, Bromley	383	6	9			
				2,306	17	9
Saint Saviour's District.						
Christchurch	671	3	5			
Saint Saviour (including the Liberty of the Clink)	1,030	10	10			
				1,701	14	3
Plumstead District.						
Charlton next Woolwich	311	16	1			
Plumstead	300	9	11			
Eltham	157	9	9			

Sched. (B.)

Parishes and Places.	Amount charged on each Parish or Part.					
	£	s.	d.	£	s.	d.
Plumstead District—*continued.*						
Lee	248	7	9			
Kidbrooke	90	18	0			
				1,109	1	6
Lewisham District.						
Lewisham, including Sydenham	1,149	19	7			
Hamlet of Penge	309	13	9			
				1,459	13	4
Saint Olave District.						
Saint Olave	536	6	1			
Saint Thomas Southwark	47	12	6			
Saint John, Horsleydown	438	12	10			
				1,022	11	5
The Charter House				20	11	10
Gray's Inn				142	13	10
Total				105,000	0	0

SCHEDULE (C.)

Form of Assessment.

Resolved, That this board do and they do hereby ascertain the sums which ought, in their judgment, to be charged upon the several parts of the metropolis, and other parts charged with mortgages, debts, and liabilities at the expiration of the Act of the 11th and 12th years of Her Majesty, chapter 112, for defraying the expenses of the said board, in the execution of the Metropolis Local Management Act, 1855, for the year ending , 18 , under and pursuant to the said Act and the Acts for amending the same; and ordered that such sums be assessed as hereinafter specified, and they are hereby assessed upon such parts respectively, and that precepts under the common seal of the board do issue for obtaining payment thereof:—

Parishes, Districts, or Parts.	Sums assessed.
[*Here insert the Parishes, Districts, Parts of Parishes, &c., as for instance,*]	
City of London, the whole - - -	
Parish of , the whole	
That part of the parish included in former district [*or* level *or* division] - - - - -	
That part of the parish included in former district [*or* level *or* division] - - - - -	
And so on, adding the names of the other parishes, districts, parts of parishes, &c., on which sums are assessed, and the sums assessed.]	

Form of precept demanding one sum assessed upon the whole of a parish or other place (*a*).

To the vestry [*or other body or person charged with payment of the amount*] of the parish [*or other place, describing it by name.*]

By virtue of an Act passed in the nineteenth year of the reign of Queen Victoria, intituled "An Act for the better Local Management of the Metropolis,"

The metropolitan board of works do issue this their precept under their common seal to you the said vestry [*or* chamberlain, &c.], and do hereby

(*a*) See as to present form of precept, note to section 22 of Metropolitan Board of Works (Loans) Act, 1869, *post*, Appendix.

require you to pay to on or before the day of now next ensuing, the sum of pounds shillings and pence, being the sum which ought, in the judgment of the said board, to be charged upon the said parish [*or* city, &c.], for defraying the expenses of the said board in the execution of the said Act, and which they the said board did, on the day of 18 , ascertain and assess upon the said parish [*or* city, *&c.*], for such purpose, under and in pursuance of the provisions of the said Act, and the Acts for amending the same in that behalf.

Dated this day of 18 .

(L. S.)

Form of precept demanding an amount made up of a sum assessed upon the whole of a parish or other place, and of a sum or sums assessed upon a part or parts of such parish or place.

To the vestry [*or other body or person charged with payment of the amount*] of the parish [*or other place, describing it by name*].

By virtue of an Act passed in the nineteenth year of the reign of Queen Victoria, intituled "An Act for the better Local Management of the Metropolis,"

The metropolitan board of works do issue this their precept under their common seal to you the said vestry, and do hereby require you to pay to on or before the day of now next ensuing, the sum of pounds shillings and pence, the sum of pounds shillings and pence, part of the said sum of pounds shillings and pence, being the sum which ought, in the judgment of the said board, to be charged upon the whole of the said parish for defraying the expenses of the said board in the execution of the said Act, and which they the said board did, on the day of 18 , ascertain and assess upon the said parish for such purpose, under and in pursuance of the provisions of the said Act and the Acts for amending the same in that behalf.

* The sum of pounds shillings and pence, other part of the said sum of pounds shillings and pence, being the sum which ought, in the judgment of the said board, to be charged upon that part of the said parish of which was at and immediately before the determinatiou and expiration of the Metropolitan Sewers Act, 1848, included in the sewerage district, for defraying the expenses of the said board in the execution of the said Act, and which they the said board did, on the day of 18 , ascertain and assess upon the said part of the said parish for such purpose, under and in pursuance of the provisions of the said Act, and the Acts for amending the same in that behalf. [*Where distinct sums are assessed upon other parts of the same parish, that portion of the preceding form commencing at* may be repeated in each case.*]

Dated this day of 18 .

(L. S.)

Sched. (C.)

Form of precept to a district board of works demanding a sum assessed upon the whole of a parish within the district, or an amount consisting of a sum assessed upon the whole parish, and a sum or sums assessed upon a part or parts of the same parish.

To the board of works for the district.

By virtue of an Act passed in the nineteenth year of the reign of Queen Victoria, intituled "An Act for the better Local Management of the Metropolis,"

The metropolitan board of works do issue this their precept under their common seal to you the said district board of works for the said district, and do hereby require you to pay to on or before the day of now next ensuing,* the sum of pounds shillings and pence, being the sum which ought, in the judgment of the said board, to be charged upon the parish of within the said district, for defraying the expenses of the said board in the execution of the said Act, and which they the said board did, on the day of 18 , ascertain and assess upon the said parish for such purpose, under and in pursuance of the provisions of the said Act and the Acts for amending the same in that behalf.

*[*Where the amount demanded is made up of a sum assessed upon a whole parish within the district, and also of a sum or sums assessed on a part or parts of the same parish, the form may be as follows:—*

The sum of pounds shillings and pence, part of the said sum of pounds shillings and pence, being the sum which ought, in the judgment of the said board, to be charged upon the whole of the parish of within the said district, for defraying the expenses of the said board in the execution of the said Act, and which they the said board did, on the day of 18 , ascertain and assess upon the said parish for such purpose, under and in pursuance of the provisions of the said Act and the Acts for amending the same in that behalf.

The sum of pounds shillings and pence, other part of the said sum of pounds shillings and pence, being the sum which ought, in the judgment of the said board, to be charged upon that part of the said parish of within the said district, which was at and immediately before the determination and expiration of the Metropolitan Sewers Act, 1848, included in the separate sewerage district, for defraying the expenses of the said board in the execution of the said Act, and which they the said board did, on the day of 18 , ascertain and assess upon the said part of the said parish for such purpose, under and in pursuance of the provisions of the said Act and the Act for amending the same in that behalf.]

Dated this day of 18 .

(L. S.)

Form of precept to a district board of works, where sums are assessed upon several parishes and parts of parishes within the district.

To the board of works for the district.

By virtue of an Act passed in the nineteenth year of the reign of Queen Victoria, intituled "An Act for the better Local Management of the Metropolis,"

The metropolitan board of works do issue this their precept under their common seal to you the said board of works for the said district, and do hereby require you to pay to the on or before the day of now next ensuing, the sum of pounds shillings and pence, being the amount of the several and respective sums of money hereunder set down and expressed opposite to and against the several parishes and parts of parishes within your said district hereinafter mentioned, which said several sums ought, in the judgment of the said board, to be charged upon the said parishes and parts of parishes respectively for defraying the expenses of the said board in the execution of the said Act, and which they the said board did, on the day of 18 , ascertain and assess upon the said several parishes and parts of parishes for such purpose, under and in pursuance of the provisions of the said Act and the Acts for amending the same in that behalf

Names of parishes, parts of parishes, &c.	£	*s.*	*d.*	£	*s.*	*d.*
The parish [*or* hamlet, precinct, *&c.*] of . The whole of the parish. That part of the said parish [*or* hamlet, precinct, *&c.* of], within the said district, which was at and immediately before the determination and expiration of the Metropolitan Sewers Act, 1848, included in the sewerage district. [*And so on in the case of each parish, part of a parish, &c.*]						

Dated this day of 18 .

(L.S.)

APPENDIX.

AN ACT

TO CONTINUE THE DUTIES LEVIED ON COAL AND WINE BY THE CORPORATION OF LONDON.

24 & 25 VICT. CAP. 42.

22ND JULY, 1861.

WHEREAS by an Act passed in the session holden in the fifth and sixth years of the reign of King William and Queen Mary, chapter ten, intituled "An Act for the relief of the Orphans (*a*) and other Creditors of the City of London," it was enacted, amongst other things, that towards raising a fund as therein mentioned a duty of 4*s.* per tun should be imposed upon all sorts of wines (*b*) whatsoever which, from and after the 4th day of June, 1694, should be imported into the port of the city of London, or the members thereof, by way

(*a*) See the Coal and Wine Duties Continuance Act, 1863, the Coal and Wine Duties Continuance Act, 1868, the Kew and other Bridges Act, 1869, and the Kew and other Bridges Act, 1869 (Amendment) Act, 1874, referred to in note (*c*) to section 1, *infra*. By the shutting of the Exchequer in the close of Charles the Second's reign, funds to the amount of £75,000, consisting of orphans' moneys which had been invested by the court, were wholly lost to the corporation, and the mode of paying off the orphan's claims was settled by Act of parliament 5 & 6 Will. & M. c. 10, by which, besides various other charges upon the city estates, an annual sum of £2,000 was directed to be raised from the present property of the inhabitants, and collected in each ward, but the orphan's claims having since been satisfied, the charges upon the corporate estates have been applied in various public improvements; *Pulling's* Laws of the City and Port of London, 114. A portion of the duties which had formerly been a part of the Orphan Fund, were continued by Act of parliament, and the fund was from time to time charged with various amounts for the purpose of making the approaches to London Bridge and effecting other public improvements. See the course of legislation with regard to these duties described in the Third Report from Select Committee on Metropolitan Local Taxation, with minutes of evidence, ordered by the House of Commons to be printed, 2nd May, 1861.

(*b*) See origin and history of the duties on wines in the port of London *Pulling's* Laws of the City and Port of London, p. 395, Notes.

Preamble.

of merchandise, over and above the then present duties charged or chargeable thereupon, and so proportionately for a greater or lesser quantity, which said duty should from time to time for ever be paid by the importer thereof unto the mayor, commonalty, and citizens of the city of London, hereinafter called "the Corporation of London:" And whereas by the Acts hereinafter mentioned, and hereinafter referred to as the Coal Duties Acts (that is to say):

1 & 2 W. 4, c. 76. 1. An Act passed in the session of Parliament holden in the first and second years of the reign of His late Majesty King William the Fourth, chapter seventy-six, intituled, "An Act for regulating the Vend and Delivery of Coals in the Cities of London and Westminster, and in certain Parts of the Counties of Middlesex, Surrey, Kent, Essex, Hertfordshire, Buckinghamshire, and Berkshire:"

1 & 2 Vict. c. 101. 2. An Act passed in the session of Parliament holden in the first and second years of the reign of Her present Majesty, chapter one hundred and one, intituled, "An Act to continue for Seven Years an Act for Regulating the Vend and Delivery of Coals in London and Westminster, and in certain Parts of the adjacent Counties:"

8 & 9 Vict. c. 101. 3. An Act passed in the session of Parliament holden in the session of the eighth and ninth years of the reign of Her said Majesty, intituled, "An Act to continue until the fifth day of July, 1862, the Acts for regulating the Vend and Delivery of Coals in London and Westminster, and in certain Parts of the adjacent Counties; and to alter and amend the said Acts:"

14 & 15 Vict. c. 146. 4. An Act passed in the session of Parliament holden in the fourteenth and fifteenth years of the reign of Her said Majesty, intituled, "An Act to amend the Acts relating to the Vend and Delivery of Coals in London and Westminster, and in certain Parts of the adjacent Counties; and to allow a drawback on Coals conveyed beyond certain Limits:" and which Acts are hereinafter referred to as the Coal Duties Acts,

or some or one of such Acts, two several duties of 1*d.* (*a*), and 1*s.* (*b*) per ton are authorized to be levied by the corporation of London upon all coals, culm, and cinders brought to any place within the port of London, or within the cities of London and Westminster, and the borough of Southwark, or to any place within the distance of twenty miles from the General Post Office in the city of London, by any railway already constructed, or hereafter to be constructed, or by inland navigation, or by any other means of conveyance: And whereas it is apprehended that the duty of 8*d.*, part of the said duty

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(*a*) The 1*d.* duty was imposed by 47 Geo. 3, c. 68, and it was continued by succeeding Acts till 5th July, 1862. This duty was originally imposed in order to establish a coal market, and 8 & 9 Vict. c. 101, continued it for the purpose of providing a fund for the opening of poor and densely populated districts in the metropolis, or for keeping open spaces in the immediate vicinity of the same, as a means of promoting the public convenience, recreation, and health.

(*b*) This duty consists of an 8*d.* and a 4*d.* duty. The 8*d.* duty was by various Acts of parliament especially appropriated to public improvements, and a considerable proportion of the improvements effected in late years have been defrayed out of it. The 8*d.* duty was included in the London Bridge Approaches Fund, and its net produce was paid over to Her Majesty's Office of Works for the liquidation of loans raised on the credit of it. The 4*d.* duty has always been claimed by the corporation of London as a part of the city's estate.

Preamble.

of 1s., will expire in the year 1861, and the said duty of 1*d.* in the month of July, 1862, unless provision be made by parliament for the continuance of such duties: And whereas it is expedient that the said duties of 4*s.* on wines, and 1*s.* 1*d.* on coals, culm, and cinders should be continued for a period of ten years: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Continuation of wine duties (*c*).

1. The above-mentioned duty of 4*s.* a tun on wines shall continue and be levied in all respects in the same manner as the same is now leviable until the 5th day of July, 1872.

(*c*) By 26 & 27 Vict. c. 46, the Coal and Wine Duties Continuance Act, 1863, section 1, all duties continued by this Act, and all Acts relating thereto, were further continued until the 5th of July, 1882; and by section 2, the net proceeds of the duty of 4*d.*, part of the duty of 12*d.*, on coal, culm, and cinders, continued by this Act, were directed to be applied by the corporation of London in the first instance, in payment of the interest and in discharge of so much of the principal of the sums mentioned in the 6th section of this Act, as remained unpaid. The Act further provided that after discharging such sums and interest the said duty of 4*d.* should be applied by the corporation in the first instance towards the raising of Holborn Valley, and afterwards to such other public improvements in or adjacent to the city of London, as parliament should thereafter sanction. By 31 Vic. c. 17, the London Coal and Wine Duties Continuance Act, 1868, all duties by the before-mentioned Acts continued till the 5th July, 1882, and all Acts relating thereto, were further continued until the 5th July, 1889; and by section 2, the net proceeds of the duty of 4*d.*, part of the duty of 12*d.* on coal, culm, and cinders continued by the Act, were to be applied by the corporation of London, so far as the same were not already appropriated by parliament, in the first instance in completing the Holborn Valley Viaduct, new streets and improvements under the Holborn Valley Improvement Act, 1864, and the Holborn Valley Improvement (Additional Works) Act, 1867, and other improvements connected therewith, and afterwards towards such public improvement or improvements in or adjacent to the city of London as parliament might thereafter sanction. By section 5 the several coal and wine duties by this Act continued for the year ending the 5th day of July, 1889, were to be applied in the first instance in freeing from toll the following bridges on the Thames, viz., Kew, Kingston-on-Thames, Hampton Court, Walton-on-Thames, and Staines; and next in making free from toll Chingford Bridge and Tottenham Mills, bridges on the Lea, and any surplus was directed to be applied as parliament might thereafter direct. The 32 & 33 Vict. c. 19, the Kew and other Bridges Act, 1869, constituted and incorporated a joint committee of the corporation of London and the metropolitan board, by the name of "the Bridges Joint Committee of the Corporation of London and Metropolitan Board of Works." It enacted that the London coal and wine duties for the year ending 5th July, 1889, should be paid to the joint committee, and directed their application and empowered the joint committee, and the companies, &c., entitled to or interested in the bridges mentioned in the Coal and Wine Duties Continuance Act, 1868, to enter into agreements for a transfer, &c., of the undertakings to the board, with certain exceptions and savings.

The joint committee were authorized to raise moneys not exceeding the amount therein limited, on the security or on account of the London coal and wine duties for the year ending 5th July, 1889, and to issue joint or several bonds or other joint or several securities under seal, for securing repayment with interest out of the said duties in the last-mentioned year to be applied for the purposes of the Act. The 37 & 38 Vict. c. 21, the Kew and other Bridges, 1869, (Amendment) Act, 1874, empowered the

Section 2.

Continuance of coal duties (*a*).

2. All duties authorized by the Coal Duties Acts, or any of them, to be levied upon coal, culm, and cinders, shall continue and be levied in the same manner in which the same are now leviable until the 5th day of July, 1872, subject to the following qualification: That, notwithstanding anything contained in the said Acts, no duties shall be payable in respect of any coal, culm, or cinders, unless the same is contained in some ship or vessel arriving at her moorings within some part of the port of London (*b*) to the westward of Gravesend, within the limits of the metropolitan police district as defined by Act of Parliament (*c*), or be brought by railway, or by inland navigation, or by some other mode of conveyance within the said limits of the metropolitan police district, including the cities of London and Westminster.

Metropolitan police district substituted for the London district.

3. After the passing of this Act the expression "London district," (*d*) used in the said recited Act of the fourteenth and fifteenth Victoria, chapter one hundred and forty-six, shall no longer have the meaning assigned to it by that Act, but shall mean so much of the several counties of Middlesex, Surrey, Kent, Herts, Essex, Bucks, and Berks, as shall be situate within the metropolitan police district, and shall include the cities of London and Westminster.

Commencement of metropolitan police district to be marked in canals, railways, and roads.

4. All the directions, powers, and provisions in the said recited Act of the fourteenth and fifteenth Victoria, chapter one hundred and forty-six, with respect to returns, certificates, and accounts, and to the erection of boxes, and stations, and boundary stones, or permanent marks on the point of any canal, inland navigation, or railway, or any turnpike or public road which shall be distant twenty miles from the General Post Office, and all other matters and things relating thereto, shall apply to returns, certificates, and accounts, and to the erection of boxes, and stations, and boundary stones, or permanent marks on the point where any canal, inland navigation, or railway, or any turnpike or public road, first enters or comes within the metropolitan police district.

Application of duties (*e*).

5. The duty of 1*d.* per ton on coals, culm, and cinders shall from and after the passing of this Act, and the said duty of 4*s.* per tun on

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joint committee to borrow from the Metropolitan Board of Works, and the board to lend, on the security of the said duties for the year ending the 5th July, 1889, sums not exceeding the amount specified, and for that purpose authorized the board to create consolidated stock under the Metropolitan Board of Works (Loans) Act, 1869.

(*a*) See note to previous section.

(*b*) The port of London extends from Staines, in the county of Middlesex, to Yantlete Creek, in the county of Kent.

(*c*) See definition of these limits in 10 Geo. 4, c. 44, s. 4, and Schedule to the Act, and 2 & 3 Vic. c. 47, s. 2.

(*d*) The London district was by 14 & 15 Vict. c. 146, s. 50, defined to mean so much of the counties of Middlesex, Surrey, Kent, Essex, Herts, Bucks, and Berks, as should be situate within the distance of twenty miles in a direct line from the General Post Office, and to include the cities of London and Westminster.

(*e*) The 30th section of the Metropolitan Board of Works (Loans) Act, 1869, enacted that in the event therein mentioned the Thames embankment or Metropolis Improvement Fund Account should be transferred from the Treasury into the name of the metropolitan board, and the duties payable to that account under the London Coal and Wine Duties Continuance Act, 1861, and the Acts continuing the same, should continue to be paid to such account and provided for the application thereof; see the Act, *post*.

Section 5.

wines, and the duty of 8*d.*, part of the said duty of 1*s.*, on coals, culm, and cinders, shall, from and after such time as all charges on the London Bridge Approaches Fund may be satisfied (*f*), be paid to an account to be opened in the name of the lords commissioners of Her Majesty's treasury at the Bank of England, to be intituled "The Thames Embankment and Metropolis Improvement Fund," and such fund shall be applied to the improvement of the metropolis in such manner as may hereafter be determined by parliament.

Application of the duty of 4*d.* to the payment of the interest and principal of sums charged thereupon for improvements.

6. That the net proceeds of the duty of 4*d.*, part of the said duty of 1*s.* on coal, culm, and cinders, shall, from the date of the passing of this Act, and during the continuance thereof, be applied by the mayor, commonalty, and citizens of the city of London, in the first instance, in payment of the interest and in discharge of the principal of the following sums raised by the said mayor, commonalty, and citizens of the city of London, and charged by them upon the said duty; viz., the sums £300,000, £200,000, and £40,000, raised for making and improving Cannon Street, in the city of London, and for effecting other improvements in the said city as authorized by the Acts of parliament of the tenth and eleventh Victoria, chapter two hundred and eighty, thirteenth and fourteenth Victoria, chapter fifty-six, and the fifteenth and sixteenth Victoria, chapter seventy-two, and that an account of the receipt and application of the said duty be kept separate and distinct from the accounts of the said mayor, commonalty, and citizens, and that an abstract of the said account be annually laid by the chamberlain of the said city before both houses of parliament, and that after discharging the said sums and interest, the said duty of 4*d.* shall be applied by the said corporation of London towards or in aid of such a public improvement or improvements in or adjacent to the city of London as parliament shall hereafter sanction.

Drawback upon coals to continue to be allowed.

7. There shall be allowed with respect to coals brought within the port of London, or within the metropolitan police district, and afterwards conveyed to any place beyond the port of London or the metropolitan police district, a drawback of the same amount and upon the same conditions as is allowed by the said recited Act of the fourteenth and fifteenth years of the reign of Her present Majesty, chapter one hundred and forty-six, and the coal duties, London, &c., Drawback Act, 1857, or one of such Acts, in respect of the coals therein mentioned, and the lord mayor, aldermen, and commons of the city of London in common council assembled shall have power, with the consent of the board of trade, to alter, vary, or dispense with any of the forms in relation to the drawback upon coals contained in the said recited Act of the fourteenth and fifteenth years of the reign of Her present Majesty, chapter one hundred and forty-six.

(*f*) The 13 & 14 Vict. c. 103, an Act to authorize further charges on the London Bridge Approaches Fund for the completion of certain improvements in the metropolis, enacted, that, after payment of all principal moneys, &c., charged on the London Bridge Approaches Fund, the residue or surplus should, during the continuance thereof, be applied to the opening an improved line of communication between Coventry Street and Covent Garden, according to a plan to be thereafter approved by parliament. And by 20 & 21 Vict. sess. 2, 1857, it is provided that the improvement authorized by that Act, and called the Covent Garden Approach, shall be deemed the improved line of communication referred to in the said Act of 13 & 14 Vict. c. 103.

Section 8.

Duty to be laid out and form an accumulating fund for improvements till appropriated by parliament (*a*).

8. The moneys from time to time paid to the account created by this Act shall, when received, be laid out and invested in the purchase of stock in some of the public stocks or funds, or upon government or real securities, at interest, in the name of the said commissioners, and the said commissioners shall from time to time lay out or invest the yearly dividends or interest of the stocks, funds, and securities so to be purchased in their names on the account aforesaid, in like manner, for the purpose of accumulation in the meantime, until the said fund is appropriated by parliament to the execution of improvements in the metropolis.

Consolidation of improvement funds.

9. All moneys, stocks, funds, and securities standing to the account of the Metropolis Improvement Fund Account created by the Act of the session of the eighth and ninth years of the reign of Her present Majesty Queen Victoria, chapter one hundred and one, shall, from and after the passing of this Act, and all moneys, stocks, funds, and securities standing to the account of the London Bridge Approaches Fund shall, from and after such time as all charges on the said funds may be satisfied, be carried to and form part of the Thames Embankment and Metropolis Improvement Fund created by this Act (*b*), and the said London Bridge Approaches Fund shall thereupon cease and determine.

Continuance of above-mentioned

10. Subject to the provisions of this Act, the said Act of the session of the fifth and sixth years of the reign of King William and Queen Mary, chapter ten, so far as relates to the levying of the said Wine

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(*a*) The Metropolitan Board of Works (Loans) Act, 1869, s. 29, directs in what manner the treasury are to apply the Improvement Fund until 5th July, 1888, and section 30 provides for the eventual transfer of the fund from the treasury to the board.

(*b*) By the 3rd section of the Act for embanking the north side of the river Thames, 25 & 26 Vict. c. 93, Thames Embankment Act, 1862, the expression "Thames Embankment and Metropolis Improvement Fund" as used in the Act, was interpreted to mean and include the stocks, funds, and securities by this (the Coal and Wine Duties Continuance Act, 1861) made applicable to improvements in the metropolis, and the duties, income, and moneys by the same Act made applicable to the formation of such fund; and the 45th section directed in what manner the fund should be appropriated. Subsequent Acts contained provisions for charging this fund with the expenses of other undertakings authorized by those Acts, and for better enabling the board to obtain loans on the security of the fund.

The works originally authorized by the Thames Embankment Act, 1862, comprised a solid embankment chiefly upon the bed or shore, and upon the northern bank of the Thames between Westminster Bridge and the east side of the Temple Gardens, and a viaduct from the last-named point to Blackfriars Bridge, with a roadway upon the embankment and viaduct throughout the entire length, such roadway to be 100 feet in width from the clock tower of the Houses of Parliament to the east end of the Temple Gardens, and 70 feet in width through the remaining part of its length; the reclaiming and inclosing all or so much of the bed or foreshore of the river Thames, as lay between the then left bank of the river and the intended embankment; and the making the approach road and certain new streets more particularly described in the 8th section. It empowered the board to borrow, with the consent of the treasury, on the security of the lands and funds acquired under and appropriated to the purposes of the Act, sums not exceeding one million pounds.

The provisions of this Act in relation to the works to be executed, the junction of new streets, the borrowing of money, and other matters, were

Duties and the said Coal Duties Acts, and all matters therein con- Section 10.

Acts, except as altered.

materially varied by subsequent statutes, and powers were conferred upon the board for embanking other portions of the river.

The 31 & 32 Vict. c. 111, Thames Embankment (North and South) Act, 1868, enacted that the board should abandon certain parts of the new street described in the 8th section of the Act of 1862, and, amongst other provisions, it repealed the 26th, 55th, 61st and 82nd sections of the same Act. The 33 & 34 Vict. c. 92, Thames Embankment (North) Act, 1870, enacted that the board should abandon the proposed new street from the Thames Embankment below Charing Cross Railway Bridge to Wellington Street, Strand, which was authorized by the last cited Act, and repealed the sections of that Act mentioned in the schedule.

The 36 & 37 Vict. c. 100, the Charing Cross and Victoria Embankment (Approach) Act, 1873, enabled the board to construct a new street commencing at Charing Crosss and terminating at the Victoria Embankment near the Charing Cross Station of the Metropolitan District Railway, and enacted that the Duke of Northumberland and Earl Percy should sell, and the board purchase and take for the purposes of the Act, the lands and property comprised in the agreements set forth in the schedules, with the requisite powers for carrying into effect the objects of the Act. The board were authorized to apply for the purposes of the Act, any money raised or authorized to be raised by them under any other Act and not required for the purposes of that Act.

The 36th and 37th Vict. c. 40, the Thames Embankment (Land) Act, 1873, after reciting, amongst other things, that certain heads of arrangement respecting the conveyance by the commissioners of woods and forests to the metropolitan board of works, of certain lands adjacent to the gardens of Fife House, Whitehall, as set forth in the schedule, were proper to be recommended for the consideration of parliament, confirmed and declared valid such heads of arrangement, and by section 4, enacted that all lands acquired by the board in pursuance of the Act should be appropriated for the purposes of a public garden and be maintained by them as such.

The 35 & 36 Vict. c. 66, the Thames Embankment (North) Act, 1872, placed the roadway on the Victoria Embankment under the management and control of the board, with the sole power and duty, except as therein expressed, of paving, macadamizing, &c., the same, and with a power to make bye-laws.

The 26 & 27 Vict. c. 45, the Metropolis Improvement Act, 1863, empowered the board to make a new street from Blackfriars to the Mansion House in connection with the embankment on the north side of the Thames.

By the 26 & 27 Vict. c. 75, the Thames Embankment (South) Act, 1863, the board were empowered to make and execute in the parish of Saint Mary, Lambeth, the embankment and works, the new street, and other improvements described, and were required to lay out and maintain a public footway of not less than 20 feet in width between certain points specified in the Act. They were authorized to borrow, subject to the provisions and on the security on which they were authorized to borrow by the Embankment Act of 1862, to the extent of four hundred and eighty thousand pounds. And 27 & 28 Vict. c. 135, the Thames Embankment Amendment Act, 1864, authorized the board for the purposes of the last-named Act to purchase additional lands and make further improvements in the same parish.

The 36 Vict. c. 7, Thames Embankment (South) Act, 1873, placed the wall and footway adjoining the Albert Embankment under the management and control of the metropolitan board, with the power and obligation to repair and maintain the same, and with power to make bye-laws.

The 27 & 28 Vict. c. 61, Thames Embankment and Metropolis Improvement (Loans) Act, 1864, authorized the commissioners of the treasury to guarantee the payment of the principal and interest of money raised under

Section 10. tained, shall be continued until the fifth day of July, 1872 (*a*) ; and all the provisions contained in the said Act of the session of the first and second years of King William the Fourth, chapter seventy-six, to take effect at the end of seven years, therein mentioned, shall take effect as if the 5th day of July, 1872, had been inserted in the said last-mentioned Act instead of the said term of seven years.

Short title. **11.** This Act may be cited for all purposes as "The London Coal and Wine Duties Continuance Act, 1861."

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the Acts mentioned in the schedule, and if necessary, to make issues out of the consolidated fund with provisions relative to the advance of money to the board by the commissioners for the reduction of the national debt. This Act was repealed by the Metropolitan Board of Works (Loans) Act, 1869. See schedule 3 to that Act.

The 31 & 32 Vict. c. 43, Thames Embankment and Metropolis Improvement (Loans) Act, 1868, empowered the board to borrow for the purposes of the Embankment and Improvement Acts, further sums in addition to those authorized by the Acts specified in the schedule to the Act of 1864, not exceeding one million eight hundred and fifty thousand pounds.

The 31 & 32 Vict. c. 135, the Thames Embankment (Chelsea) Act, 1868, authorized the board to embank the river Thames between Chelsea Hospital and Battersea Bridge, and make a roadway and execute other works connected therewith, with power to carry out auxiliary and connecting works. They were empowered to borrow, subject to the provisions in and on the security on which they were authorized to borrow money by the Thames Embankment Act, 1862, but subject to the charges so created or authorized by the Act and the other Acts specified in the 29th section, to the extent of two hundred and eighty-five thousand pounds in addition to any other money which, independently of this Act, they were authorized to borrow.

(*a*) See note to section 1, *supra*.

AN ACT

FOR MAKING FURTHER PROVISION RESPECTING THE BORROWING OF MONEY BY THE METROPOLITAN BOARD OF WORKS, AND FOR OTHER PURPOSES CONNECTED THEREWITH (*a*).

32 & 33 VICT. CAP. 102.

9TH AUGUTS, 1869.

WHEREAS under the Acts mentioned in the first schedule to this Act the metropolitan board of works has incurred debts now amounting in the whole to nearly eight million pounds :

And whereas it is necessary for the board to borrow such further sums for the purposes of the said Acts as, together with the sum already borrowed, will not exceed in the whole the amount of ten million pounds sterling, and it is expedient to authorize the board to raise the whole or any part of the said sum of ten million pounds by loans in manner hereinafter provided, without the guarantee of the commissioners of her Majesty's treasury, and for that purpose to create consolidated stock or annuities charged indifferently on all the securities mentioned in the said Acts, and to establish one fund out of moneys arising from those securities, for the purpose of paying the dividends on and redeeming such stock and annuities :

(*a*) This Act authorizes the board to raise such further sums as with the sum already borrowed will not exceed ten million pounds sterling, and enacts, amongst other things, that after its passing the board shall not raise, except in the case specified, any money under any powers of borrowing otherwise than in conformity with the Act. It also empowers the board, for the purposes and in manner mentioned, to create capital stock to be called metropolitan consolidated stock, to be charged indifferently on the whole of the lands, rents, and property belonging to the board under the Acts referred to, and on all money to be raised by rates, and on the improvement fund, subject to existing charges. It provides for certificates, transfers, and other matters relating to consolidated stock, and empowers the public works loan commissioners and the commissioners for the reduction of the national debt, with the approval of the treasury, to make advances to the board on the security of such stock. The Act also authorizes the board, in lieu of consolidated stock, to create for the like purpose terminable annuities. For the purpose of paying dividends on and redeeming consolidated stock and other purposes, the board are required to raise a rate to be called the metropolitan consolidated rate, in lieu of all other rates or assessments authorized to be assessed by them generally over the metropolis, to be assessed and raised in manner provided by the Metropolis Management Act, 1855, and the amending Acts, with respect to raising the

Section 1.

And whereas it is expedient otherwise to amend the Acts relating to the metropolitan board of works:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Metropolitan Board of Works (Loans) Act, 1869.

Definition of terms.

2. In this Act,—

The term "board" means the Metropolitan Board of Works:

The term "Treasury" means the commissioners of her Majesty's Treasury:

The term "improvement fund" means the Thames embankment and metropolis improvement fund constituted under the London Coal and Wine Duties Continuance Act, 1861, and the Acts amending and continuing the same.

Each of the several series of Acts specified in the different parts of the first schedule to this Act is in this Act referred to by the collective name given to such series in such separate part.

Exercise by board of borrowing powers.

3. After the passing of this Act the board shall not (except for such temporary period not exceeding six months as the Treasury may from time to time sanction) raise, otherwise than in conformity with this Act and with the sanction of the treasury, any money under

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sums therein referred to, with special provisions relative to precepts, estimates, and orders by vestries and district boards on overseers. It further establishes a consolidated loans fund for paying dividends on and redeeming consolidated stock, and specifies the moneys to be carried to such fund and their application. It contains provisions for the application of moneys becoming part of the improvement fund until the 5th July, 1888, and for a transfer, in the event named, of the improvement fund from the treasury to the board; and amongst other provisions, it gives the board additional borrowing powers for the purposes specified, and enables them to lend money to the managers of the metropolitan asylums district. The Act also requires the board to prepare a return to be laid before parliament, showing up to 25th March preceding the amount of consolidated stock and other particulars. The first schedule enumerates and classifies the Acts authorizing loans by the board; the second contains forms of transfer, and the third specifies the enactments repealed, with the date and title of the Acts, and defines the extent of the repeal. This Act was amended by the Metropolitan Board of Works (Loans) Act, 1870, the Metropolitan Board of Works (Loans) Act, 1871, the Metropolitan Board of Works (Loans) Act, 1875, which regulates the raising of money by the board for their expenditure for general improvements, and contributions for fire brigade purposes, and loans to vestries, district boards, and other bodies; and contains provisions limiting the amount to be expended by the board for the several purposes named, up to 31st December, 1876, and limits the amounts to be advanced to vestries, district boards, and other bodies, up to the same date, with provisions relating to returns and other matters. Acts have since been passed annually, regulating the raising of money by the board. The last of these Acts is the Metropolitan Board of Works (Money) Act, 1878, which is to be read as one with the Metropolitan Board of Works (Loans) Acts, 1869 to 1871, and the Metropolitan Board of Works (Moneys Acts, 1875 to 1876. The chief provisions in this series of Acts bearing on the principal Act, are referred to in the notes to its various sections.

any powers of borrowing, whether conferred by the Acts mentioned in the first schedule to this Act, or otherwise howsoever. Section 3.

Creation by board of consolidated stock (*a*).

4. The board, for the purpose of raising such portion of the loans authorized by the Acts mentioned in the first schedule to this Act for the purposes of those Acts as the treasury may from time to time sanction, may create capital stock, to be called the metropolitan consolidated stock, in this Act referred to as consolidated stock, and to be issued in such amounts and manner, at such price and times, on such terms, subject to such conditions, with such dividends, and redeemable (at the option of the board) at par at such times and on such conditions as the treasury, before the creation thereof, may from time to time approve.

Security for stock.

5. No holder of any portion of consolidated stock shall have any priority or preference by reason of the prior creation of such stock or otherwise, and all consolidated stock created for the purposes of the Acts mentioned in the first schedule to this Act, or of any Act hereafter to be passed, and the dividends thereon, and the sums required for the redemption thereon, shall be charged indifferently on the whole of the lands, rents, and property belonging to the board, under the Acts mentioned in the first schedule to this Act, and on all moneys which can be raised by the board by rates under this Act, and on the improvement fund, subject to all charges existing at the passing of this Act on such lands, rent, property, moneys, and funds respectively, and shall be a first charge thereon after those charges; and all moneys required for payment of the dividends on such stock, and the sums required to be raised for the redemption of such stock as mentioned in this Act, shall be raised out of the improvement fund and metropolitan consolidated rate as in this Act mentioned.

Application of money raised.

6. Where any stock has been created under this Act in order to raise any portion of a loan authorized by any of the Acts mentioned in the first schedule to this Act for the purposes of any of those Acts, such stock is referred to in this Act as created for the purposes of such Act, and the money raised thereby shall be deemed to have been borrowed under and for the purposes of such Act, and shall (subject to the provisions of this Act) be applied accordingly.

Stock, &c., to be personal estate (*b*).

7. All consolidated stock shall be personal estate, and shall not descend to the heir or be liable to any foreign attachment by the custom of London or otherwise.

(*a*) See section 46, *infra*, as to the creation of terminable annuities. See note to section 36, *post*, authorizing the board to issue metropolitan bills. By the Metropolitan Board of Works (Loans) Act, 1875, section 12, where the board are desirous of obtaining a further Act for raising money, they are to cause the bill to be submitted to parliament, to be accompanied with tables giving such information as the treasury require, for enabling a comparison to be made between the rateable value of the metropolis and the liabilities of the board. By section 13, they are to deliver to the treasury returns shewing, with respect to every parish, &c., in respect of which a loan is obtained from the board, the rateable value of the property therein and its indebtedness; and it authorizes the board to require notices from bodies applying for loans, respecting their financial condition. The Metropolitan Board of Works (Loans) Act, 1871, section 3, enacts that section 3 of the Married Women's Property Act, 1878, shall, as regards the governor and company of the Bank of England, apply to and extend to consolidated stock.

(*b*) A gift of metropolitan consolidated stock was held to be void under

Section 8.

Advance of money by public works loan commissioners.

8. The public works loan commissioners may advance money to the board on the security of consolidated stock, and without requiring any further or other security, the said advances to be repaid by such instalments and within such period as may in each case be agreed upon with the approval of the treasury.

Investment and advance by commissioners for the reduction of the national debt.

9. The commissioners for the reduction of the national debt, if they think fit, with the approval of the treasury, may from time to time, out of any moneys coming into their hands under any Act relating to savings banks or to post-office savings banks, make advances to the board on the security of consolidated stock without any further or other security, and may invest the said moneys in such stock.

Books to be kept for consolidated stock.

10. The board shall cause to be kept at their office, or at some bank to be approved by the treasury, books in which the names and addresses of the several persons and bodies corporate from time to time entitled to consolidated stock, and the amounts to which they are respectively entitled, and all transfers thereof, shall be duly entered.

Transfer of stock.

11. Consolidated stock shall be transferred only as follows :

(1.) The transfer shall be made in the said books, and shall be signed in such books by the transferee (*a*) or by his attorney duly authorized in that behalf, which authority shall be given by writing under his hand and seal attested by two or more witnesses :

(2.) The transfer may be in the form contained in the second schedule to this Act, which shall be effectual in law to pass to the transferee all the interest of the transferor in the stock expressed to be transferred and the dividends thereon :

(3.) The acceptance of the transfer may be signified by the transferee or his attorney authorized in manner aforesaid in that behalf, subscribing such acceptance in the said books :

(4.) A person becoming entitled to any stock in consequence of the death, bankruptcy, or marriage of the owner, or by any lawful means other than by transfer under this Act, shall produce such evidence of his title as may be reasonably required by the board, or by the persons or body corporate who keep the said books.

No notice of any trust, express, implied, or constructive, shall be entered in the said books or receivable by the board, or by any persons or body corporate who keep such books.

Closing of transfer books (*b*)

12. The board, persons, or body corporate who keep the said books for transfers may, for such period not exceeding fourteen days as

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the Mortmain Act, as a gift of impure personalty ; *Cluff* v. *Cluff*, L. R. 2 Ch. Div. 222. See as to a gift of railway stock for charitable purposes *Attree* v. *Hawe*, L. R. W. N. 1877, p. 227.

(*a*) The Metropolitan Board of Works (Loans) Act, 1870, section 7, enacts that this section shall have effect as if "transferor" were substituted for "transferee."

(*b*) The 12th section of the Metropolitan Board of Works (Loans) Act, 1871, substitutes for this section a provision that these books may be

Section 12.

they may from time to time fix previous to each payment of dividend, close the books, and shall give seven days notice of the day on which such books will be closed by advertisement in some daily morning newspaper circulating generally in the metropolis.

Books to be evidence.

13. The books so kept under the provisions of this Act shall be evidence of all matters therein entered under the provisions of this Act, and of the title of persons or bodies corporate entered therein as owners of any consolidated stock who are mentioned therein as such owners.

Certificates of stock.

14. The board, persons, or body corporate who keep the said books may, if the board think fit, issue to the holder of any consolidated stock a certificate under the hand of some officer of the board or body corporate or of such persons, which certificate shall specify the amount of stock to which such holder is entitled, and such certificate shall be evidence of the title of the holder at the date of the certificate to the amount of stock stated therein, but the want of such certificate shall not prevent the owner of any consolidated stock from transferring the same.

Certificate to be renewed when destroyed.

15. If any such certificate be worn out or damaged, then the same may, upon the production thereof, be cancelled, and another similar certificate may be given to the holder of the stock therein specified, or if such certificate be lost or destroyed, then, upon proof thereof to the satisfaction of the board, persons, or body corporate who keep the said books, a similar certificate shall be given to the holder of the stock specified in the certificate so lost or destroyed, and in either case a due entry of the substituted certificate shall be made in the said books, and for every such certificate given in pursuance of this section a fee not exceeding two shillings, to be carried to the account of the board, may be demanded.

Provisions of 26 & 27 Vict. c. 28, as to certificates to bearer, to extend to this Act (*c*).

16. The Stock Certificate Act, 1863 (which relates to the issue to holders of stock in the public funds of certificates to bearer transferable by delivery), shall extend to consolidated stock in the same manner as if such Act were herein enacted, with the following modifications ; namely,

(1.) The term "the bank" shall be construed to mean the board, persons, or body corporate who keep the books for the transfer of consolidated stock :

(2.) The terms "public stocks" and "stock" shall be construed to mean consolidated stock :

(3.) The term "the books of the bank" shall be construed to mean the books kept for the transfer of consolidated stock in pursuance of this Act :

(4.) All fees shall be paid to the account of the board :

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closed on any day in the month next preceding that in which the dividends are payable, but so that they be not at any time closed for more than fifteen days, and the persons who on the day of such closing are inscribed as holders of consolidated stock, shall as between them and the transferees be entitled to the dividends thereon becoming payable after that day.

(*c*) The Stock Certificate Act, 1863, enacts that a stock certificate, unless a name is inscribed therein as provided in the Act, shall entitle the bearer to the stock therein described, and shall be transferable by delivery.

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(5.) There shall be charged on every stock certificate a stamp duty of an amount equal to three times the amount of the stamp duty which would be chargeable on a transfer of the stock specified in the certificate :

(6.) The provision respecting a stock certificate, in respect of which no coupons have been presented for payment of a period of ten years, shall not extend to consolidated stock.

Arrangement with bank.

17. The board may enter into such arrangement with any bank for carrying into effect the provisions of this Act with reference to the creation and transfer of consolidated stock, and the management thereof, and the keeping of the said books, and for the proper remuneration of the bank with reference thereto, as may be approved by the Treasury.

Stamp duty on transfers (*a*).

18. There shall be paid in respect of every transfer of consolidated stock under this Act a stamp duty of two shillings and sixpence for every full sum of one hundred pounds, and also for any fractional part of one hundred pounds, of the nominal amount of the stock transferred.

Forgery, &c., of transfers of stock, &c.

19. For the purposes of the Act of the session of the twenty-fourth and twenty-fifth years of Her Majesty's reign, chapter ninety-eight, "to consolidate and amend the Statute Law of England and Ireland relating to indictable offences by forgery," all consolidated stock shall be deemed to be capital stock of a body corporate within the meaning of that Act.

Making false entries in books.

20. Any person who with intent to defraud makes any false entry in or alters any word or figure in any of the said books for transfers, or in any manner falsifies any of the said books, or makes any transfer of any consolidated stock, in the name of any person who is not the true owner thereof, shall be guilty of felony, and on conviction shall be liable to penal servitude for any term not exceeding fourteen years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

Making out false dividend warrants.

21. Any person who, being a clerk, officer, or servant of or employed by the board, or the persons or body corporate who keep the books for transfer of consolidated stock, does with intent to defraud make out or deliver any stock certificate, dividend warrant, or document for the payment of money in relation to any consolidated stock for a greater or less amount than the person on whose behalf such certificate, warrant, or document is made out is entitled to, shall be guilty of felony and shall be liable on conviction to be kept in penal servitude for any term not exceeding seven years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

(*a*) The 2nd and 3rd sections of the Metropolitan Board of Works (Loans) Act, 1870, provide for payment by the board, of composition for stamp duty chargeable on transfers, of existing and future stock. The Metropolitan Board of Works (Loans) Act, 1875, authorizes the board to create consolidated stock for composition for stamp duty and other charges, and section 8 empowers the board to expend for composition for stamp duty and other expenses, such amount as they may require and the treasury approve, and may raise the same by creating consolidated stock.

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Power to levy consolidated rate (*b*).

22. The board, for the purpose of paying the dividends on and redeeming the consolidated stock, and also of defraying the expenses authorized to be incurred and incurred by them in the obtaining or the execution of the Acts mentioned in the first schedule to this Act or any of them (*c*), and of defraying the sums required for the payment of the principal and interest of and the sinking funds for any securities granted by the board for the purposes of those Acts or any of them, before the passing of this Act, shall (in lieu of all rates or assessments (*d*) authorized at the passing of this Act to be assessed by them generally over the metropolis) from time to time assess and raise a rate to be called the Metropolitan Consolidated Rate, in this Act referred to as the Consolidated Rate.

Such rate shall be assessed and raised in manner provided by the Metropolis Management Act, 1855, and the Acts amending the same, with respect to the sums required for defraying the expenses of the board in the execution of that Act, and to sums assessed for the purposes of the Main Drainage Acts (*e*), and may be assessed wholly or in part in respect of expenses incurred or to be incurred, and also in respect of any unpaid balance of a former rate; and all the provisions of the Metropolis Management Act, 1855, and the Acts amending the same concerning the estimate on which assessments by the board are to be made, and for and in relation to the assessing, raising, and enforcing payment of the sums assessed by the board, shall, subject to the provisions of this Act, extend and apply to and in the case of the consolidated rate in the same manner as if that rate were therein mentioned instead of the sums required for defraying the expenses of the board incurred in the execution of the

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(*b*) The Metropolitan Board of Works (Loans) Act, 1875, s. 2 and subsequent Acts, the last of which was the Metropolitan Board of Works (Money) Act, 1878, limit the aggregate amount which the board were authorized to expend up to the 31st December, 1878, under the 144th section of the Metropolis Management Act, 1855, and the 72nd section of the Metropolis Management Amendment Act, 1862, for the purposes specified.

(*c*) By the Artizans and Labourers Dwellings' and Improvement Act, 1875, s. 21, the board are required to levy as part of the consolidated rate, without any demand on the city, a sufficient amount for the purposes of that Act.

(*d*) The provisions relating to the assessments of the board, are contained in a series of enactments, commencing with the 172nd section of the Metropolis Management Act, 1855 to section 177 inclusive. The first named section was repealed by the 5th section of the Metropolis Management Amendment Act, 1862, which makes new provisions on the subject. The enactments relative to the metropolitan main drainage rate will be found in the 21 & 22 Vict. c. 104, (main drainage) in several sections commencing with the 10th.

(*e*) The Metropolitan Board of Works (Loans) Act, 1871, s. 3, enacts that where the board by means of money raised by the creation of stock or otherwise duly provide for the principal payable in any year in respect of main drainage securities, it shall not be necessary to include the amount of principal so provided for in any estimate or precept for the consolidated rate, or to raise the same by means of the consolidated rate. And it further enacts that any amount of principal in any year, not so provided for, in or for any year with interest for the same year on the main drainage securities, shall be charged on the consolidated rate with a saving (section 4) for holders of existing securities, and a saving (section 5) of the guarantee given by the treasury for payment of principal and interest of any main drainage securities.

Section 22. Metropolis Management Act, 1855, and for the Main Drainage Rate respectively (*a*).

(*a*) By the Valuation of Property (Metropolis) Act, 1869, s. 45, the valuation list for the time being in force under that Act, shall be conclusive evidence of the gross and of the ratable value of the several hereditaments included therein, and of the fact that all hereditaments required to be inserted therein have been so inserted for the purposes, amongst others, of the main drainage improvement and other rates and sums assessed on any part of the metropolis by the Metropolitan Board of Works. And by section 17, the clerk of the managers of the metropolitan asylum district is required, within the time in the Act limited, to cause the totals of the gross and ratable values of all the valuation lists to be printed, and a printed copy of all such totals to be sent to, amongst other bodies, &c., the Metropolitan Board of Works. The 38 & 39 Vict. c. 33, s. 1, the Metropolis Management Amendment Act, 1875, provides that from and after the 6th April, 1876, the metropolitan board, in every assessment made by them upon such parts of the metropolis as contain property wholly or partially exempt from sewer rate, and in the precepts issued for drainage payment of the sums so assessed, shall make an allowance or abatement equal to the exemptions which under the 163rd and 164th sections of the Metropolis Management Act, 1855, are entitled to be made in any rate for the purpose of meeting such precept. And by section 2 the overseers and assessment committees acting under the Valuation (Metropolis) Act, 1869, are directed to cause the totals of the gross and ratable value of the property so wholly or partially exempt from sewers rate, and the extent of such exemption, to be ascertained and inserted in the valuation lists, and by section 3, the lists are to be sent by the assessment committee before the 1st November in each year, to the clerk of the managers of the metropolitan asylum district, who shall print and send the said totals and extent of exemptions with the other totals of gross and ratable value required to be printed and sent by the 17th section of the said Valuation (Metropolis) Act, 1869. From these valuation lists the basis for raising the consolidated rate is computed; the exemptions directed by 27 & 28 Vict. c. 268, for the commutation of tithes in the city of London and for other purposes, and by the above cited Act 38 & 39 Vict. c. 33, being allowed in ascertaining the rentals. The precepts issued by the board for the payment of the sums assessed upon the metropolis as modified in accordance with the requirements of the Acts now in force, are in the following form:—

[In respect of Metropolitan Consolidated Rate.]

To the vestry of the parish of in the county of .

By virtue of the "Metropolis Management Act, 1855," and the Acts for amending, extending, and varying the same; the Metropolitan Board of Works (Loans) Act, 1869, and subsequent Acts.

The Metropolitan Board of Works do issue this their Precept under their common seal to you the said vestry, and do hereby require you to pay to the London and Westminster Bank, No. 1, St. James's Square, in the city of Westminster, treasurer and banker of the said metropolitan board, in respect of the metropolitan consolidated rate, the sum of pounds shillings and pence; in manner following; That is to say, the sum of pounds shillings and pence, part thereof, on or before the 1st day of June, 1879; and the sum of pounds shillings and pence, residue thereof, on or before the 1st day of December, 1879; the said sum of pounds shillings and pence, being the amount by law chargeable upon the said parish, for payment of principal and interest of, and sinking fund for, securities granted before the passing of the Metropolitan Board of Works

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Every precept issued by the board for the purposes of the metropolitan consolidated rate shall specify, first the proportion of the amount named in the precept which is required for the purpose of paying the principal and interest of and sinking fund for securities granted by them before the passing of this Act, and the dividends on and the sums required for the redemption of consolidated stock under this Act, and secondly the proportion of such amount which is required for all other purposes of the board.

In making an estimate for the first-mentioned portion of the consolidated rate the board shall compute the part required in respect of securities granted or stock issued for the purposes of the Main Drainage Acts and the Fire Brigade Act respectively.

In making an estimate for the last-mentioned portion of the consolidated rate the board shall not estimate the sum required for the purposes of the Fire Brigade Act as larger than a sum which would be produced by a rate of one halfpenny in the pound on the gross value of the property assessed to the metropolitan consolidated rate, and shall compute the part of the said portion of the consolidated rate required for those purposes (*b*).

The board shall state in every precept and shall keep a record of all computations required to be made by this section, which record shall be open to inspection by any person on payment of a fee not exceeding one shilling, and shall be conclusive for all purposes whatsoever.

Nothing in this section shall delay or accelerate, or authorize the board to delay or accelerate, the repayment of any principal or interest of, or the providing of a sinking fund for any securities granted by the board before the passing of this Act for the purposes of the Main Drainage Acts without the consent of the holders thereof; and while such securities remain undischarged the board shall from time to time ascertain the amount which would have been raised by the levying of the main drainage rate, and the

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Loans Act, 1869, and the dividends on, and the sums required for the redemption of, consolidated stock raised under the said Loans Act, 1869, and subsequent Acts; and also for all other purposes of the board, as set forth in the schedule annexed;

And which sums they, the said metropolitan board did, on the day of 1879, ascertain and assess upon the said parish, as a portion of the said metropolitan consolidated rate in pursuance of the provisions of the said Acts in that behalf.

The schedule with columns and with appropriate headings follows.

Dated this day of January, 187 .

By Order of the Board,

Clerk of the Board.

Note.—Bridge expenses are required by the "Metropolis Toll Bridges Act, 1877," to be raised in like manner as expenses chargeable upon a general rate, and not as expenses chargeable on a sewers rate.

(*b*) The amount to be expended by the board for the purposes of the Fire Brigade, was limited by subsequent Acts; see note (*b*) to section 22, *supra*.

Section 22.

amount which would have been so raised shall be charged on the consolidated rate, and be deemed to be from time to time payable thereout before any portion of that rate is applied to any other purpose.

Nothing in this section shall extend to any sum levied under section one hundred and eighty-one of the Metropolis Management Act, 1855 (*a*).

Saving of rights (*b*).

23. Where any portion of the consolidated rate represents any rate which for the purposes of any contract or otherwise is deemed to be a landlord's or tenant's rate, such portion shall for those purposes be deemed to be such landlord's or tenant's rate as the case may be, and all rights at the passing of this Act existing as between landlord and tenant, or enjoyed by any person under statute, contract, or otherwise in relation to the sums or rates assessed by the board shall continue to exist and be enjoyed in relation to the consolidated rate as between and by the same persons and in the same manner as in relation to such sums or rates.

Orders of vestry and district board for raising money required for consolidated rate (*c*).

24. Where a vestry or district board make an order requiring the overseers (including in the term any body of persons performing the duties of overseers) of any parish in their district to levy and pay over the sum which such vestry or district board require to raise for the purpose of satisfying or of replacing any sum expended in satisfying any precept of the board for the purposes of the consolidated rate, such vestry and district board shall distinguish in their order the sum to be levied in such parish for that purpose, and the sum (if any) required for other purposes of such vestry and district board; and the overseers or collectors shall, in the demand notes or receipts to be given by them for the sums levied or collected in pursuance of such order, distinguish the rate in the pound required to meet the sum specified in the order to be required for the purpose of satisfying such precept, and the rate in the pound specified to be required for other purposes.

Every such order, demand note, and receipt shall also specify the whole sum paid by such vestry or district board for satisfying such precept, and the proportions specified in the precept as required for the purposes of securities and consolidated stock, and for other purposes of the board respectively, and for the purposes of the Main Drainage Acts and the Fire Brigade Act respectively.

Exempted places.

25. The places mentioned in schedule (C.) to the Metropolis Management Act, 1855, and every liberty, precinct, and place in the metropolis shall be liable to the metropolitan consolidated rate, except so far as they may be entitled under the General Improvement Acts to

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(*a*) The enactment to which this saving applies, relates to the mortgages, annuities, securities, and other debts and liabilities of the Metropolitan Commissioners of Sewers at or immediately before the determination or expiration of 11 & 12 Vict. c. 112.

(*b*) As to relative rights of landlords and tenants, see Metropolis Management Act, 1855, section 169, and note thereon, and section 96 of Metropolis Management Amendment Act, 1862, repealing sections 217, 218, and 219 of Metropolis Management Act, 1855.

(*c*) See as to raising of money by vestries and district boards, Metropolis Local Management Act, 1855, section 118, *et seq.*, section 174, and section 9 of Metropolis Management Amendment Act, 1862.

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any exemption from any rate or assessment or part of a rate; and for this purpose they shall be deemed to be respectively benefited by all works executed (before or after the passing of this Act) by the board under the Main Drainage Acts, and those works shall be deemed works for carrying into effect a plan for preventing the sewage of the metropolis from flowing into the river Thames in or near the metropolis.

Consolidated loans fund.

26. For the purpose of paying the dividends on and redeeming consolidated stock created under this Act there shall be established a fund to be called the consolidated loans fund of the metropolis, in this Act referred to as the consolidated loan fund, and, subject to the provisions of this Act, the board shall keep a separate account of such fund.

Moneys applicable to consolidated loans fund.

27. The board shall carry to the consolidated loans fund the moneys following (after providing for all charges on such moneys existing at the passing of this Act and to which the same shall for the time being be applicable); that is to say,—

(1.) All money whether in the nature of capital or otherwise arising from the sale, lease, or other disposition of lands, rents, and property belonging to the board:

(2.) The residue of the improvement fund (*d*) which may come into their hands in the manner mentioned in this Act:

(3.) Such an annual sum in every year out of the consolidated rate, and out of the contributions paid to the board in pursuance of the Fire Brigade Act (*e*) or out of one of such sources as may be equal to two per cent. on the total nominal amount of consolidated stock, whether it has been cancelled or not; or

(4.) Such greater or less annual sum as the Treasury may from time to time approve as being in their opinion necessary in order to pay the dividends on and to redeem all the consolidated stock in sixty years from the date of the creation thereof.

Application of consolidated loans fund

28. The board shall from time to time apply the consolidated loans fund according to such regulations as may be approved by the Treasury, first in the payment of the dividends on consolidated stock, and then in one or more of the following modes, namely, in purchasing metropolitan consolidated stock, and in redeeming metropolitan consolidated stock, and in payment of the principal of the securities granted before the passing of this Act.

The board may in the meantime invest such fund (subject to the said regulations) in Government securities, the interest of which, and the resulting income thereof, shall form part of the consolidated loans fund and shall be applied and may be invested in the same manner.

All consolidated stock purchased and redeemed, and all securities paid in pursuance of this section, shall be cancelled, and thereupon all dividends and interest in respect thereof shall be extinguished.

Application of Thames

29. After the passing of this Act, the Treasury shall, in every half

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(*d*) See definition of Improvement Fund, section 1, *supra*.
(*e*) See Fire Brigade Act, *post*, Appendix.

Section 29. embankment fund.

year or other period fixed by them, apply all moneys from time to time becoming part of the improvement fund in such half year or other period until the fifth of July one thousand eight hundred and eighty-eight, as follows:—

(1.) In applying in each year, in continuation of the like payments directed by the Thames Embankment and Metropolis Improvement (Loans) Act, 1868, the sum of one hundred and eighty-five thousand pounds for payment of interest from time to time due, and repayment of the principal moneys advanced on the securities issued before the passing of the last-mentioned Act, with the guarantee of the Treasury, under the Thames Embankment and Metropolis Improvement (Loans) Act, 1864, or such other yearly sum as the board and the respective holders of such securities from time to time mutually agree upon, so that such principal moneys, and all interest thereon, may, unless otherwise agreed between such holders and the board, be paid off and discharged on or before the fifth day of July one thousand eight hundred and eighty-two.

(2.) Then in paying the interest for the time being due on securities granted, after the passing of the Thames Embankment and Metropolis Improvement (Loans) Act, 1868, and before the passing of this Act, under or for the purposes of the Embankment Acts, and in repaying the principal moneys advanced on such securities.

(3.) Then in paying the residue to the board to be carried by them to the consolidated loans fund.

Transfer of improvement fund to board.

30. When all securities granted before the passing of this Act with the guarantee of the Treasury, under the Thames Embankment and Metropolis Improvement (Loans) Act, 1864, and the Thames Embankment and Metropolis Improvement (Loans) Act, 1868, or either of those Acts, have either been paid or converted under this Act, the Treasury may declare that all their liability under such guarantee has ceased, and that after the date in that behalf mentioned this section shall take effect.

Such declaration shall be published in the London Gazette, and thereupon after the date in that behalf mentioned in such declaration this section shall take effect, and the Improvement Fund account shall be transferred from the Treasury into the name of the board, and the duties payable to that account under the London Coal and Wine Duties Continuance Act, 1861, and the Acts continuing the same shall continue to be paid to such account, and the improvement fund shall be applied by the board in the manner in which it is directed by this Act to be applied by the Treasury, and the accounts thereof shall, for the purpose of audit and all purposes whatever, be deemed to be accounts of the board, but shall, subject to the provisions of this Act, be kept as separate accounts.

24 & 25 Vict. c. 42.

Separate accounts of amount raised for different Acts.

31. The board shall cause to be kept proper accounts showing the appropriation of the moneys raised by the stock created under this Act for the purposes of the different series of Acts, namely, the General Improvement Acts, the Main Drainage Acts, the Embankment Acts, and the Fire Brigade Act respectively.

All or any of the accounts of the board may be from time to time consolidated in such manner and on such conditions as the Treasury approve, and the accounts so kept shall be deemed sufficient for the purposes of any Act and all other purposes.

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Conversion of existing securities into consolidated stock.

32. Where the board before the passing of this Act have granted any security for the purposes of any of the Acts mentioned in the first schedule to this Act, they may enter into an arrangement with the holder of such security for the conversion thereof into such amount of consolidated stock as may be arranged between them. Such arrangement shall be made according to such regulations and on such terms as may be approved by the Treasury.

Consent of trustees, incapacitated persons, &c., to conversion.

33. Any person who holds any security granted by the board before the passing of this Act for the purposes of any of the Acts mentioned in the first schedule to this Act, and who is one of the persons enabled by the Lands Clauses Consolidation Act, 1845, to sell land under that Act, may consent to any arrangement approved by the Treasury under this Act, for the conversion of such security into consolidated stock, and to the payment of such security before the time limited for the payment thereof, and accept money for such consent in the same manner as if such person was the absolute owner in his own right of such security, and such person is hereby indemnified for so doing.

Creation of stock for paying off money borrowed, &c.

34. For the purpose of raising money, or (*b*) to pay off any security granted before the passing of this Act by the board for the purposes of any of the Acts mentioned in the first schedule to this Act, and for the purpose of the conversion of any such security, the board may create (*c*) consolidated stock under the provisions of this Act in like manner and with the like sanction as they may create the same for the purpose of raising money for the purposes of the said Acts, and the money raised by such stock shall be applied in such payment, and all stock created under the provisions of this section shall be deemed to be created and the money raised thereby to have been borrowed for the purposes of the Acts for the purpose of which the original security was granted.

Sinking fund of existing securities.

35. Where any security granted before the passing of this Act is paid off out of the Consolidated Loans Fund, or by means of money raised by the creation of stock under this Act, or is converted into stock, and there is any sinking fund which has been formed for the payment of such security, either alone or jointly with other securities, the board shall carry to the Consolidated Loans Fund such sinking fund, or such proportion thereof as may be the proportion which such security bears to the total of the securities for which such fund is the sinking fund.

Additional borrowing powers of board (*d*).

36. The board may create consolidated stock for the purpose of raising, in addition to the loans authorized by the Acts mentioned in the first schedule to this Act, such further sums as the Treasury may sanction for the following purposes; namely,

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(*b*) By the Metropolitan Board of Works (Loans) Act, 1871, section 9, the word "or" in this line shall be deemed to be omitted.

(*c*) By the Metropolitan Board of Works (Loans) Act, 1871, section 8, the board are authorized to exercise this power by substituting consolidated stock for main drainage securities, &c., although the securities may have been paid off. And by section 9, consolidated stock for the purpose of this enactment shall be purchased or redeemed and cancelled within 60 years.

(*d*) The Metropolitan Board of Works (Money) Act, 1877, by section 15, empowers the board to raise money to the amount stated, by the issue of bills, to be called metropolitan bills. And see note to section 3, *ante*, as to

Section 36. (1.) For the purpose of completing the works authorized by the Main Drainage Acts, and for covering in and otherwise completing and making efficient the main sewers transferred to and vested in the board by the Metropolis Management Act, 1855:

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conditions to be observed by the board in bills for raising moneys to be submitted to parliament.

The provisions relative to metropolis bills in the last-named Act, are the following:—

Section 15. Notwithstanding anything in this Act or in any other Act relating to the board contained, the board, with the consent of the Treasury, may from time to time, as they think fit, raise any part of the moneys which they are by this Act authorized to raise, not exceeding, &c., by the issue of bills under this Act.

Section 16. A bill under this Act (in this Act referred to as a "metropolitan bill") shall be a bill in form prescribed by a regulation made in pursuance of this Act for the payment of the principal sum raised therein, in the manner and at the date therein mentioned, so that the date be not less than three nor more than twelve months from the date of the bill. Interest shall be payable in respect of a metropolitan bill at such rate and in such manner as the board, with the consent of the Treasury, may direct.

Section 17. All moneys raised by the issue of any metropolitan bills, shall be paid to the board, and shall be expended by them for the purposes for which the same are by this Act authorized to be raised respectively. The principal money and interest expressed in any metropolitan bill to be payable, shall be charged on the consolidated rate, and shall be payable out of the said rate, or as regards principal, out of moneys raised by the creation of consolidated stock under this Act for the purpose for which such principal money has been expended, and as regards interest, out of the consolidated loans fund.

Section 18. With respect to the issue of metropolitan bills, the following provisions shall have effect:—

(1.) Metropolitan bills shall be issued under the authority of a warrant sealed by the board and countersigned on behalf of the Treasury.

(2.) Each Metropolitan bill shall be for the amount directed by the board.

(3.) Each metropolitan bill shall be sealed by the board, the sealing being attested by the clerk in his own name.

Section 19. The board may from time to time, with the consent of the Treasury, make, and when made, rescind, alter, and add to, regulations for carrying into effect the provisions of this Act with respect to metropolitan bills, and in particular,—

(1.) For regulating (subject to the provisions of this Act) the preparation, form, mode of issue, mode of payment, and cancellation of metropolitan bills:

(2.) For regulating the issue of a new metropolitan bill in lieu of one defaced, lost, or destroyed:

(3.) For preventing by the use of counterfoils or of a special description of paper or otherwise, fraud in relation to the metropolitan bills:

(4.) For the proper discharge to be given upon the payment of a metropolitan bill:

Every regulation purporting to be made in pursuance of this section shall be deemed to be within the powers of this Act, and shall have effect as if it were enacted in this Act.

Section 20. For the purpose of paying off the principal money of any metropolitan bills, the board may raise any sum which they are by this Act empowered to raise, by the creation of consolidated stock for the purposes for which such principal money has been expended, not exceeding the amount of such principal money, but, save as aforesaid, the powers given to

(2.) For the purpose of completing the works authorized by the Embankment Acts:

(3.) For the purpose of providing station houses, fire engines, fire escapes, and permanent plant for the purpose of the Fire Brigade Act:

and all the provisions of this Act shall apply in like manner as if such sums were loans authorized by the Main Drainage Acts, the Embankment Acts, and the Fire Brigade Act respectively, and all the provisions of those Acts relating to the execution of works respectively authorized by them shall continue in force and extend to the works executed by means of the money raised in pursuance of this section, and all stock created under this section shall be deemed to be created for the purposes of the above-mentioned Acts respectively.

Loans by board to managers of metropolitan asylum district (*a*).

37. Where the managers of the metropolitan asylum district require to borrow money under "The Metropolitan Poor Act, 1867," and the Acts amending the same, such managers may borrow and the board may lend on the security authorized by those Acts such sums as the managers may have been authorized by the poor law board, in pursuance of those Acts, to borrow, not exceeding in the whole five hundred thousand pounds.

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the board by this Act to raise moneys for any purposes by the creation of consolidated stock, shall be suspended to the amounts and for the periods to and for which moneys are for the time being authorized by the Treasury to be raised for such purposes respectively by the issue of metropolitan bills.

Section 21. Sections eight, nine, ten, and eleven of the Act of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-eight, intituled "An Act to consolidate and amend the Statute Law of England and Ireland relating to indictable offences by forgery" (which sections relate to the forgery of and other frauds relating to exchequer bills), shall apply to the metropolitan bills, and shall have effect as if "exchequer bill" in those sections included "metropolitan bill."

Section 22. The board may enter into such arrangements with any bank approved by the Treasury for carrying into effect the provisions of this Act with respect to the issue of metropolitan bills, and to the payment of the principal sum named therein, and to all matters relating thereto, and for the proper remuneration of such bank with reference thereto, as they may think proper and may be approved by the Treasury.

(*a*) The board of works were empowered to lend further amounts to the manager of the metropolitan asylum district by the Acts of 1871, 1875, 1876, 1877, and 1878.

By the Metropolitan Board of Works (Loans) Act, 1875, section 14, the metropolitan board required from bodies to which they are authorized to lend money, returns embodying information respecting their financial condition and other matters.

By the Metropolitan Board of Works (Loans) Act, 1871, section 10, the board are empowered to lend to vestries and district boards, any sum borrowed by them under the Metropolis Local Management Acts for any work which appears to the board and the Treasury to be a permanent work, and this section is to apply *mutatis mutandis* to every such loan. By the Metropolitan Board of Works (Loans) Act, 1875, section 4, no money shall, after the passing of that Act, be lent by the metropolitan board to any vestry or district board under this section.

The last-named Act by section 4, authorizes the metropolitan board to lend to vestries and district boards, up to the 31st December, 1876, money for the purpose of any work, with power to the board and the

Section 37. For the purpose of raising the money so lent to the managers, the board may create consolidated stock under the provisions of this Act, in like manner and with the like sanction as they may create the same for the purpose of raising money for the purposes of the Acts mentioned in the first schedule to this Act, and all the provisions of this Act shall apply as if such money were raised and stock were created for the purposes of the last-mentioned Acts, with this exception, that the money required in pursuance of this section may be borrowed by the board in addition to the sum limited by this Act.

All sums received by the board from the said managers in respect of interest on or the principal of such loan shall be carried to the Metropolitan Consolidated Loans Fund.

Notwithstanding anything in the Metropolitan Poor Act, 1867, and the Acts amending the same, the amounts so lent by the board shall be repaid to them by the said managers, with interest, within such period not exceeding sixty years as may be agreed upon between the board and the said managers, subject to the approval of the Treasury.

The board may lend and the managers may borrow money in pursuance of this section for the purpose of repaying any loan due at the passing of this Act from the said managers.

The board and the said managers may execute all such deeds and documents and do all such acts as may be necessary or expedient for carrying this section into effect.

Treasury to spread the repayment over a series of years. It limits the aggregate amount to be lent by the board under this section, and makes provision as to time for repayment and other matters, and enacts that no money shall be lent to vestries or district boards under section 10 of Metropolitan Board of Works (Loans) Act, 1871.

The 5th section of the Metropolitan Board of Works (Loans) Act, 1875, authorizes the metropolitan board, up to 31st December, 1876, to lend to the guardians of a union or parish wholly or for the most part in the metropolis, and the 6th section enables the board up to the same date to lend to any corporate body, commissioners, burial board, or other public body, having powers to levy, directly or indirectly, rates in respect of lands in the metropolis, or to make charges on rates or take dues or impositions in the nature of rates in the metropolis. Provisions are made limiting the aggregate amount to be lent under that section, and relative to the period of repayment and other things.

The Metropolitan Board of Works (Loans) Act, 1876, section 7, empowers the board to lend to vestries and district boards, money required for paying off loans and other purposes up to 31st December, 1877, and limits the amount. Section 8 contains corresponding provisions with respect to boards of guardians, and section 9 with respect to corporations, commissioners, &c. The Metropolitan Board of Works (Money) Act, 1878, extends the amount which maybe lent by the board up to 31st December, 1879, to the manager of the metropolitan asylum district.

The Metropolitan Board of Works (Money) Act, 1878, authorizes the board to raise further sums of money for the purposes therein mentioned, and limits the amount to be lent by them to vestries and district boards and other bodies therein mentioned, up to 31st December, 1879. See further provisions of the Act of 1877, referred to in note to section 36, *ante*.

The 5th section of the Elementary Education Act, 1870, empowers the board to lend to the school board of London the sums they are authorized to borrow for the erection of schools, with the approval of the education department; and this provision is extended by the Elementary Education Amendment Act, 1872, to sums required for the erection of offices.

Section 38.

Limit of borrowing powers.

38. The board shall not after the passing of this Act borrow exclusively of any amount borrowed for the purposes of a loan to the managers of the metropolitan asylum district an amount which, together with the amount actually owing by them at the passing of this Act, after deducting the market value at the date of the passing of this Act of all sinking funds created in pursuance of any of the Acts mentioned in the first schedule to this Act, and remaining at that date in the hands of the board, exceeds in the whole ten million pounds sterling actually received by them; provided that this shall not prevent the board from raising any money under the provisions of this Act for the purpose of paying off securities granted before the passing of this Act, and all moneys so raised shall be duly applied by the board accordingly.

Payment of dividends.

39. The dividends on all consolidated stock shall be paid on such days as may be from time to time fixed by the board with the approval of the treasury.

Appointment of a receiver in certain cases (*a*).

40. Any person or body corporate entitled to any consolidated stock or to any security granted by the board may, if default be made for a period of not less than two months after demand in writing in the payment of dividend on such stock or of interest on any such security, apply to the court of chancery in a summary way for the appointment of a receiver, and the court of chancery may, if the court think fit, on such application appoint a receiver on such terms and conditions, and with such powers, as the court think fit. Such persons shall have the same power of collecting and receiving and applying all moneys liable to be carried under this Act to the consolidated loans fund, and of assessing and raising the metropolitan consolidated rate for the purpose of obtaining such moneys as the board or any officer thereof may have, and shall apply all such moneys, after payment of expenses and costs, under the direction of the court, for the purposes of and in conformity with this Act. The court may at any time discharge such receiver, and shall have full jurisdiction over such receiver, and the applicant and all persons and bodies interested in the acts of the receiver, in the same manner and to the same extent as if a suit had been duly instituted for the administration of the affairs of the board and a receiver had been appointed in such suit.

The lord chancellor of Great Britain, with the advice and assistance of the lords justices of the court of appeal in chancery, the master of the rolls, and the vice-chancellors, or any two of those judges, may from time to time make general orders for the regulation of the practice of the court of chancery under this section.

Moneys received by the board to be paid into bank to their account.

41. All sums of money, bills, and drafts which are received by the board under the provisions of this Act shall from time to time, within two days after the same have been received, or within two days after any bill has been accepted, completed, and perfected, if the same is not accepted, completed, and perfected at the time it is received, be paid by the board into the hands of some bank to be appointed by the board with the approval of the treasury, for which the receipt of one of the cashiers or other officers of such bank shall

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(*a*) The 188th section of the Metropolis Management Act, 1855, provides for the appointment of a receiver in case of nonpayment of principal or interest of mortgages under that Act.

Section 41.

be a sufficient discharge ; and all such moneys, bills, and drafts so to be paid as aforesaid shall from time to time be placed to the account of the board with such bank, and shall be applied and disposed of by the board for and towards the several purposes to which the same are by law applicable.

Exemption of purchasers of stock from inquiries into application of money, regularity of proceedings, &c. (*a*).

42. A person or body corporate purchasing any consolidated stock, or advancing money to the board on the security of such stock, shall not be bound to see or inquire whether such stock is created or such advances are required for the purposes of the Acts mentioned in the first schedule to this Act, or is or are within the borrowing powers of the board, or otherwise in accordance with the provisions of this Act, or any regulations made thereunder, and shall not be prejudiced by the same not being so, and shall not be bound to see or inquire into the application of the money or any part of the money arising from such stock or advances, or be in any way responsible for the non-application thereof, and shall not be bound to inquire whether the board so raising money, or any meeting thereof, was properly constituted or convened, or that the proceedings at any meeting of such board were legal or regular.

Approval of Treasury

43. The approval, sanction, or certificate of the treasury, where required under this Act, may be signified by the signature of any officer appointed by them for the purpose, and shall, until the contrary is proved, be deemed to have been given, and the holder of consolidated stock shall not be prejudiced by reason of the absence of any such approval, sanction, or certificate.

Purchasers of land to be freed from charges.

44. Where the board sell or lease or otherwise dispose of to any person or body corporate any lands, rents, or property charged under the provisions of this Act as security for any consolidated stock, such land, rents, and property shall in the hands of such person or body corporate be absolutely freed of every such charge, and such person or body corporate shall not be bound to see to or inquire into the application of the money arising from such sale to the consolidated loans fund or otherwise in manner directed by this Act, or be in any way responsible for the non-application thereof.

Power of board to sell, &c., land.

45. Nothing in this Act shall affect any power or duty of the board to sell, lease, or otherwise dispose of land, rents, or property belonging to them or to apply the moneys in the nature of capital arising from such sale, lease, or disposition, in discharge of such liabilities and securities as are a charge on the same in priority to the charge created by this Act, or affect the claim of any person or body corporate under any of the Acts mentioned in the first schedule to this

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(*a*) By the Metropolitan Board of Works (Loans) Act, 1871, section 13, trustees, executors, &c., empowered to invest money in public stocks or funds or other government securities, may, unless forbidden by the will or other instrument under which they act, invest the same in consolidated stock. See the case of *Re Redhead*, L. R. W. N. 1878, p. 194, in which an order was made for the investment of money in consolidated stock. Stock in the funds belonging to a charity incorporated by Act of parliament, may be sold out and reinvested on metropolitan consolidated stock under this Act ; *Re Clergy Orphan Corporation*, L. R. 18 Eq. 280.

Act, or otherwise existing at the passing of this Act, to such moneys or any part thereof. Section 45.

Creation by board of annuities.

46. The board may, in lieu of any portion of consolidated stock authorized to be created under this Act, create for the like purpose terminable annuities, to be called metropolitan annuities, and to be granted at such rate of interest, on such terms, subject to such conditions, and terminable after such number of years as the treasury may before the creation thereof from time to time approve; and throughout this Act the term "stock" shall be construed to include annuities so created, and all the provisions of this Act shall be construed accordingly, subject to the following qualifications; namely,

(1.) The term "dividend" shall be construed to mean the portion of the annuity which represents interest.

(2.) The term "nominal amount of stock" shall be construed to mean the capital value of the annuity at the time when such nominal amount is required to be ascertained, such capital value to be calculated on the same principles as the calculation made at the time of its creation.

(3.) The term "redeeming stock" and terms referring thereto shall be construed to mean paying the portion of instalments of any annuity which represents capital.

(4.) Instalments of an annuity shall be paid on such days as may from time to time be fixed by the board with the approval of the treasury.

(5.) An appointment of a receiver may be made where one or more of the applicants happen to be entitled partly to stock and partly to annuities, or where one or more of the applicants happen to be entitled to stock and one or more to annuities, as well as where he or they are entitled to stock alone or annuities alone.

(6.) Where power is given by this Act to create stock, or to lay out the consolidated loans fund in the purchase of stock or to convert any security into stock, or to invest in or advance money on the security of stock, such creation, purchase, conversion, investment, or advance may be of, in, into, or on the security of annuities only or partly annuities and partly stock.

(7.) There shall be paid in respect of every transfer of metropolitan annuities (*b*) a stamp duty of two shillings and sixpence for every full sum of one hundred pounds, and also for any fractional part of one hundred pounds of the value of the annuities transferred, which shall be computed in the case of a bonâ fide sale on the amount of the purchase money and in any other case upon the average selling price of the annuities transferred on the day of the date of the transfer.

Saving rights of holders of existing securities.

47. Nothing in this Act shall affect the securities or rights of any person or body corporate who may, before the passing of this Act, have advanced money to the board for the purposes of the Acts mentioned in the first schedule to this Act, or who may for the time

(*b*) The Metropolitan Board of Works (Loans) Act, 1870, section 4, provides for the payment by the board, of composition for stamp duty chargeable on metropolitan annuities.

Section 47.

being hold any securities granted by the board under those Acts before the passing of this Act, so long as such persons or body corporate have not been paid the principle and interest due in respect of such advances and securities, or made an arrangement for the conversion of such security under this Act; and nothing in this Act shall prejudice or affect the guarantee given by the treasury before the passing of this Act for the payment of the principal and interest of such securities; and the treasury and the board shall respectively during the same period (whenever so required by the holders of such securities) apply the improvement fund and the funds and moneys under the control of the board in such manner, and perform all such acts and exercise all such powers, and, if necessary, levy the same rates and assessments as they would have been required to do for the benefit and security of the holders of such securities if this Act had not passed:

Provided, that where the repayment of the sums borrowed is made by the security dependent on the state of the funds charged with such repayment, and no time has been expressly limited by the security for the payment of the money advanced to the board thereon, the holder of such security shall not be entitled to have the amount secured thereby paid to him at any earlier time than if this Act had not passed, or to have any larger proportion of the rate or fund which is charged with the same raised or applied, than he would have been entitled to have raised or applied, if this Act had not passed, that is to say, than the proportion which the amount of his security bears to the total amount of securities charged on that rate or fund before the passing of this Act, and having the same rank as to priority, but the board may at any time with his consent repay out of the consolidated loans fund the principal money due on the security.

Uncompleted contracts for loans.

48. Where at the passing of this Act the board have entered into any contract for any loan, with or without the guarantee of the Treasury thereon, and the whole of such loan has not been paid or the securities therefor have not been granted, for the purposes of this Act, such loan shall be deemed to be actually owing at the date of this Act and to have been advanced, charged, and secured according to the terms of such contract, and the guarantee of the Treasury (if given) to have been given, and the securities for such loan to have been granted and issued before the passing of this Act.

Annual return to be laid before parliament.

49. On or before the first of June in every year the board shall prepare a return, in such form as may be from time to time directed by the Treasury, showing up to the twenty-fifth of March preceding the amount of consolidated stock, and the application of the money raised by such stock, and the sums carried to and the application of the consolidated loans fund, and such other particulars respecting their loans transactions, and such estimate of the expenditure of the board for all purposes for the year commencing on such twenty-fifth of March, as the Treasury may from time to time require, and such return shall be laid before both Houses of Parliament on or before the said first of June, if Parliament be then sitting, and if not within ten days after the next meeting of Parliament.

Provisions repealed in third schedule.

50. The Acts mentioned in the third schedule to this Act are hereby repealed to the extent therein mentioned, except so far as they relate to any securities granted and the application of any moneys raised before the passing of this Act, and to the rates and

moneys for payment of such securities while they remain undischarged. Section 50.

Provided that this repeal shall not affect anything already done or suffered, or any right already acquired or accrued under such enactments, or any rate or assessment already made or precept already issued, or any remedy or proceeding in respect of such thing, right, rate, assessment, or precept.

SCHEDULES.

FIRST SCHEDULE.

Acts Authorizing Loans.

Date.	Title.
PART I.—GENERAL IMPROVEMENT ACTS.	
18 & 19 Vict. c. 120	The Metropolis Management Act, 1855.
19 & 20 Vict. c. 112	The Metropolis Management Amendment Act, 1856.
25 & 26 Vict. c. 102	The Metropolis Management Amendment Act, 1862.
20 & 21 Vict. c. cxv.	Covent Garden approach and Southwark and Westminster communication Act, 1857.
20 & 21 Vict. c. cl.	The Finsbury Park Act, 1857.
21 & 22 Vict. c. xxxviii.	Victoria Park Approach Act, 1858.
27 & 28 Vict. c. iv.	The Southwark Park Act, 1864.
28 & 29 Vict. c. iii.	Whitechapel and Holborn Improvement Act, 1865.
29 & 30 Vict. c. cl.	Kensington Improvement Act, 1866.
31 & 32 Vict. c. vii.	Marylebone (Stingo Lane) Improvement Act, 1868.
PART II.—MAIN DRAINAGE ACTS.	
21 & 22 Vict. c. 104	The Metropolis Management Amendment Act, 1858.
26 & 27 Vict. c. 68	The Metropolitan Main Drainage Extension Act, 1863.
28 & 29 Vict. c. 19	An Act to extend the period for borrowing the sum authorized to be raised under the Metropolitan Main Drainage Extension Act, 1863.
PART III.—FIRE BRIGADE ACT.	
28 & 29 Vict. c. 190	The Metropolitan Fire Brigade Act, 1865.

Schedule 1.

PART IV.—EMBANKMENT ACTS.

25 & 26 Vict. c. 93	The Thames Embankment Act, 1862.
26 & 27 Vict. c. 45	The Metropolis Improvement Act, 1863.
26 & 27 Vict. c. 75	The Thames Embankment Act, 1863.
27 & 28 Vict. c. cxxxv.	Thames Embankment Amendment Act, 1864.
27 & 28 Vict. c 61	The Thames Embankment and Metropolis Improvement (Loans) Act, 1864.
31 & 32 Vict. c. 43	The Thames Embankment and Metropolis Improvement (Loans) Act, 1868.
31 & 32 Vict. c. cxi.	The Thames Embankment (North and South) Act, 1868.
31 & 32 Vict. c. cxxxv.	The Thames Embankment (Chelsea) Act, 1868.
32 & 33 Vict. c. cxxxiv.	The Park Lane Improvement Act, 1869.

SECOND SCHEDULE.

Forms of Transfer.

I, *A. B.*, of , in consideration of the sum of pounds paid to me by *C. D.*, of , do hereby transfer to the said *C. D.*, his executors, administrators, and assigns, the sum of £ metropolitan consolidated stock [*or* annuities] standing in my name in the books kept of such stock [*or* annuities], and all my property, right, and interest in and to the same and the dividends thereon [*or* the instalments thereof].

In witness whereof, I have hereunto set my hand this day of one thousand eight hundred and

A. B. (L.S.)

I, *C. D.*, do hereby accept the above-named sum of £ stock [*or* annuities], and will hold the same subject to the same conditions on which the said transferor held the same.

In witness whereof, I have hereunto set my hand this day of one thousand eight hundred and

C. D. (L.S.)

THIRD SCHEDULE.

Enactments Repealed.

Date.	Title.	Extent of Repeal.
18 & 19 Vict. c. 120.	"An Act for the better Local Management of the Metropolis."	So much of section one hundred and thirty-five of the Metropolis Management Act, 1855, as provides that the sewers and works therein mentioned shall be completed on or before the 31st of December, 1860; so much of section one hundred and eighty-three as relates to the mode of borrowing by the Metropolitan Board of Works, and sections one hundred and eighty-four to one hundred and ninety-one, both inclusive, so far as regards the Metropolitan Board of Works.
20 & 21 Vict. c. cxv.	"Covent Garden Approach and Southwark and Westminster Communication Act, 1857."	Section forty-five from "and for securing" to end of section, and sections forty-six to fifty-three, both inclusive, and section fifty-six.
20 & 21 Vict. c. cl.	"The Finsbury Park Act, 1857."	Section thirty-six from "and for securing" to end of section, and sections thirty-seven to forty-four, both inclusive.
21 & 22 Vict. c. 104.	"An Act to alter and amend the Metropolis Local Management Act (1855), and to extend the powers of the Metropolitan Board of Works for the Purification of the Thames and the Main Drainage of the Metropolis."	Sections four to seven, and ten to twenty-two, all inclusive, and section twenty-six.
21 & 22 Vict. c. xxxviii.	"Victoria Park Approach Act, 1858."	Section thirty-eight from "and for securing" to end of section, and sections thirty-nine to forty-four, both inclusive, and section forty-seven.
25 & 26 Vict. c. 93.	"An Act for embanking the North Side of the River Thames from Westminster Bridge to Blackfriars Bridge, and for making new streets in and near thereto."	Section thirty-seven, and sections forty-two to forty-six, both inclusive.

Schedule 3.

Date.	Title.	Extent of Repeal.
25 & 26 Vict. c. 102.	"An Act to amend the Metropolis Local Management Acts."	Sections nineteen and twenty so far as regards the Metropolitan Board of Works, and section twenty-six.
26 & 27 Vict. c. 45.	"An Act for making a new street from Blackfriars to the Mansion House in the city of London in connexion with the Embankment of the River Thames on the northern side of that river, and for other purposes."	So much of section twenty as incorporates section thirty-seven of the Thames Embankment Act, 1862; and sections twenty-two and twenty-three.
26 & 27 Vict. c. 68.	"An Act to extend the powers of the Act relating to the Main Drainage of the Metropolis."	The whole Act.
26 & 27 Vict. c. 75.	"An Act for the embankment of part of the river Thames on the south side thereof, in the parish of Saint Mary Lambeth, and for other purposes."	So much of section twenty-one as incorporates section thirty-seven of the Thames Embankment Act, 1862; sections twenty-six, twenty-seven, twenty-eight, and twenty-nine.
27 & 28 Vict. c. 61.	"An Act for empowering the Commissioners of the Treasury to guarantee, and the Commissioners for the Reduction of the National Debt to advance, the sums authorized to be borrowed for the Embankment of the Thames and Improvement of the Metropolis, and for other purposes connected therewith."	The whole Act.
27 & 28 Vict. c. iv.	"The Southwark Park Act, 1864."	Section thirty-one from "and for securing" to end of section, and sections thirty-two to thirty-nine, both inclusive.
28 & 29 Vict. c. 19.	"An Act to extend the period for borrowing the sum authorized to be raised under the Metropolitan Main Drainage Extension Act, 1863."	The whole Act.
28 & 29 Vict. c. 90.	"An Act for the establishment of a Fire Brigade within the metropolis."	Sections nineteen, twenty, and twenty-one.
28 & 29 Vict. c. iii.	"Whitechapel and Holborn Improvement Act, 1865."	Section thirty-one from "and for securing" to end of section, and section thirty-two to thirty-nine, both inclusive, and section forty-two.

Schedule 3.

Date.	Title.	Extent of Repeal.
29 & 30 Vict. c. cl.	"Kensington Improvement Act, 1866."	Section thirty from "and for securing" to end of section, and sections thirty-one to thirty-eight, both inclusive, and section forty-one.
31 & 32 Vict. c. 43.	"An Act for extending the provisions of the Thames Embankment and Metropolis Improvement (Loans) Act, 1864, and for amending the powers of the Metropolitan Board of Works in relation to loans under that Act."	The whole Act.
31 & 32 Vict. c. vii.	"Marylebone (Stingo Lane) Improvement Act, 1868."	Section nineteen from "and for securing" to end of section, and sections twenty to twenty-six, both inclusive. and section twenty-nine.
31 & 32 Vict. c. cxi.	"The Thames Embankment (North and South) Act, 1868."	So much of section eighteen as relates to the mode of borrowing, and sections nineteen to twenty-two, both inclusive.
31 & 32 Vict. c. cxxxv.	"The Thames Embankment (Chelsea) Act, 1868."	So much of section twenty-eight as incorporates section thirty-seven of the Thames Embankment Act, 1862; so much of section twenty-nine as relates to the mode of borrowing, and sections thirty to thirty-two, both inclusive.
32 & 33 Vict. c. cxxxiv.	"The Park Lane Improvement Act, 1869."	So much of section twenty-five as relates to the mode of borrowing, and sections twenty-six to twenty-eight, both inclusive.

AN ACT

TO PROVIDE FOR SUPERANNUATION ALLOWANCES TO OFFICERS OF VESTRIES AND OTHER BOARDS WITHIN THE AREA OF THE METROPOLIS LOCAL MANAGEMENT ACT.

29 VICT. CAP. 31.

18TH MAY, 1866.

WHEREAS it is expedient that provision should be made to enable superannuation allowances to be granted to officers of vestries of any parish and district boards of any district and of other parochial bodies within the metropolis who become disabled by infirmity or age to discharge the duties of their offices:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows:

Vestries, district boards, and metropolitan board of works may grant superannuation allowances to officers in certain cases (*a*).

1. The vestry of any parish and district board of any district or any other parochial body within the metropolis, and also the metropolitan board of works, may, at their discretion, grant to any officer in their respective services, including the chairman of the metropolitan board of works, who shall become incapable of discharging the duties of his office with efficiency by reason of permanent infirmity of mind or body, or of old age, upon his resigning or otherwise ceasing to hold his office, an annual allowance not exceeding in any case two-thirds of his then salary, regard being had to the scale of allowances hereinafter contained, and shall charge such allowance to the fund or funds to which such salary would have been charged if he had continued in his office: Provided always, that nothing in this Act contained shall affect the powers contained in the two hundred and thirteenth section of "The Metropolis Management Act, 1855."

Allowances not to be assignable for debts, &c.

2. This allowance shall be payable to or in trust for such officer only, and shall not be assignable for nor chargeable with his debts or other liabilities without the consent in writing of the vestry, district board, metropolitan board of works, or other parochial body.

(*a*) By the Baths and Washhouses Act, 1878 (41 Vict. c. 14), this power is extended to officers and servants employed in baths, washhouses, open bathing places, &c.

Section 3.

Limitation of grant of allowances.

3. No officer shall be entitled to such allowance on the ground of old age who shall not have completed the full age of sixty years.

Scale of allowances.

4. Subject to the provisions herein contained, the allowance to be granted after the commencement of this Act to persons who shall have served in an established capacity as officers as aforesaid, whether their remuneration be computed by weekly wages, poundage, or percentage on collection of rates, or annual salary, shall be as follows; (that is to say,)

To any person who shall have served ten years and upwards, and under eleven years, an annual allowance of ten-sixtieths of the salary and emoluments of his office;

And in like manner an addition of one-sixtieth in respect of each additional year of such service until the completion of a period of service of forty years, when the annual allowance of forty-sixtieths may be granted; and no addition shall be made in respect of any service beyond forty years; but in computing the time of an officer's service any period during which such officer shall have been in the service of a vestry, board of trustees, or other parochial board of the same parish superseded by "The Metropolis Management Act, 1855," or of any parish comprised in the district board granting such allowance, shall be included.

Power to increase allowance.

5. When for the due and efficient discharge of the duties of any office professional or other peculiar qualifications not ordinarily to be acquired in the vestry or board's service are required, and any person having such qualifications shall have been or may be appointed thereto beyond the age of thirty years, any vestry or board may, by order, direct that when any person now holding or who may hereafter be appointed to such office shall retire from their service, a number of years, not exceeding ten, to be specified in the said order, shall, in computing the amount of superannuation allowance which may be granted to him under this Act, be added to the number of years during which he may have actually served.

Power to grant gratuities in case of retirement before entitled to superannuation allowance.

6. Any vestry or board or other parochial body may grant to any person who is compelled to quit their service by reason of severe bodily injury occasioned, without his own default, in the discharge of his public duty, or from infirmity of mind or body, before the completion of the period which would entitle him to a superannuation allowance, a gratuity not exceeding three months pay for every two years of service.

Notice of grant to be given.

7. No grant shall be made without one month's previous notice, to be specially given in writing to every member of the vestry or district board, of the proposal to make such grant, and the time when it shall be brought forward.

Interpretation of terms.

8. In the construction of this Act the term "metropolis" shall have the same interpretation as in the Metropolis Management Act, 1855, and Metropolis Management Amendment Act, 1862; the words "other parochial body" shall mean all trustees, overseers, and others who make the several rates for the purposes of the vestry or the district board of any district.

AN ACT

TO AMEND THE METROPOLIS MANAGEMENT ACTS.

38 & 39 VICT. CAP. 33.

29TH JUNE, 1875.

WHEREAS by section one hundred and sixty-three of the Metropolis Management Act, 1855, it is provided that any sewers rate raised under that Act shall, as regards all land used as arable, meadow, or pasture ground only, or as woodland, orchard, market garden, hop, herb, flower, fruit, or nursery ground, be assessed and levied in the proportion of one fourth part only of the net annual value of such land:

And whereas by section one hundred and sixty-four of the same Act it is also provided that where any property was, at the time of the issuing of the first commission under the Act of the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve, entitled to exemption from or to any reduction or allowance in respect of the sewers rate, such exemption, reduction, or allowance shall be observed and allowed in levying any sewers rate under that Act:

And whereas by virtue of the said recited Act, and the Acts amending the same, the metropolitan board of works do assess the several parts of the metropolis according to the basis on which the printed totals of the valuation lists sent out by the clerk of the managers of the metropolitan asylum district under "the Valuation (Metropolis) Act, 1869," are made (*a*), and issue their precepts for sums of money which, by reason of the recited exemptions, cannot be levied upon some of the property included in such assessment, or can only be levied at one fourth of the amount included in such assessment, whereby the parts of the metropolis wherein such exemptions exist are compelled to make a rate at an increased amount in order to meet such precepts:

Be it therefore enacted by the Queen's most excellent Majesty, by

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(*a*) The 46th section of 32 & 33 Vict. c. 67, makes the valuation list for the time being in force, conclusive evidence of the gross value and of the rateable value of the hereditaments included therein, and of the fact that all hereditaments required to be inserted therein have been inserted for the purposes of the sewers, lighting, general and other rates levied by order of district boards or vestries, the main drainage improvement and other rates and sums assessed on any part of the metropolis by the metropolitan board of works, and of other rates which are enumerated.

and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows : Section 1.

Metropolitan board of works to make abatement on assessment of parts of metropolis containing property exempt from sewers rate.

1. From and after the sixth day of April one thousand eight hundred and seventy-six the metropolitan board of works, in every assessment made by them upon such parts of the metropolis as contain property wholly or partially exempt from sewers rate, and in the precepts issued for obtaining payment of the sums so assessed, shall make an allowance or abatement equal to the reduction or exemption which, under the one hundred and sixty-third and one hundred and sixty-fourth sections of the Metropolis Management Act, 1855, is required to be made in levying any rate for the purpose of meeting such precepts.

Totals of value of property so exempt to be inserted in valuation lists.

2. The overseers and assessment committees acting under the Valuation (Metropolis) Act, 1869, shall cause the totals of the gross and rateable value of the property so wholly or partially exempt from sewers rate, and the extent of such exemption, to be ascertained and inserted in the valuation lists which will come into force on the sixth day of April one thousand eight hundred and seventy-six, and in every valuation list which shall thereafter be made by them.

Totals to be printed.

3. The said lists shall be sent by the assessment committees before the first day of November in each year to the clerk of the managers of the metropolitan asylum district, who shall print and send the said totals and extent of exemptions, with the other totals of gross and rateable value required to be printed and sent by the seventeenth section of the said Valuation (Metropolis) Act, 1869.

Appeal in case of unfairness, &c.

4. Any unfairness or incorrectness in the said totals and extent of exemptions may be appealed against in the manner provided for appealing against totals of gross or rateable value under section thirty-two of the Valuation (Metropolis) Act, 1869.

AN ACT

TO AMEND THE LAWS RELATING TO THE CONSTRUCTION OF BUILDINGS IN THE METROPOLIS AND ITS NEIGHBOURHOOD (*a*).

18 & 19 VICT. CAP. 122.

14TH AUGUST, 1855.

WHEREAS it is expedient that the laws relating to buildings in the metropolis and its neighbourhood should be amended: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows; (that is to say,)

PRELIMINARY.

Section 1.

Short title.

1. This Act may be cited for all purposes as "The Metropolitan Building Act, 1855."

Commencement of Act.

2. This Act shall, except in cases where it is otherwise expressly provided, come into operation on the first day of January, one thousand eight hundred and fifty-six.

(*a*) The Metropolitan Building Act, 1860, amends the rules of this Act with respect to the cubical dimensions, &c., of warehouses; and the Metropolitan Building Act, 1861, exempts from the operation of this Act any buildings erected, &c., by the commissioners for the Exhibition of 1851. The Metropolitan Building Act, 1869, transfers to the metropolitan board the duties connected with dangerous structures heretofore discharged by the metropolitan police. The Metropolitan Building Act, 1871, contains further exemptions from the first part of this Act; see note to section 6, *post*. The Metropolis Management Act, 1855, and this Act, were further amended by the Metropolis Management and Building Acts Amendment Act, 1878 (41 & 42 Vict. c. 32), which contains further provisions for regulating the erection and extension of houses and buildings in close proximity to certain roads, passages, and ways; for empowering the metropolitan board to cause alteration in theatres and music-halls in certain cases, and to make regulations with respect to the position and structure of new theatres and certain new music-halls; to make provisions with respect to the making, filling-up, and preparation of the foundation and sites of houses, &c., and with respect to the quality of the substances to be used in the sites, foundations, and walls of such houses, &c.; and to make further provisions with

Section 3.

Interpretation of certain terms in this Act.

3. In the construction of this Act (if not consistent with the context) the following terms shall have the respective meanings hereinafter assigned to them ; (that is to say,)

"The Treasury" shall mean the Commissioners of Her Majesty's Treasury :

"Public building" (*b*) shall mean every building used as a church, chapel, or other place of public worship ; also every building used for purposes of public instruction ; also every building used as a college, public hall, hospital, theatre, public concert room, public ball room, public lecture room, public exhibition room, or for any other public purposes :

"External wall" (*c*) shall apply to every outer wall or vertical enclosure of any building not being a party wall :

"Party wall" (*d*) shall apply to every wall used or built in order to be used as a separation of any building from any other building, with a view to the same being occupied by different persons :

"Cross wall" shall apply to every wall used or built in order to be used as a separation of one part of any building from another part of the same building, such building being wholly in one occupation :

"Party structure" shall include party walls, and also partitions, arches, floors, and other structures separating buildings, stories, or rooms which belong to different owners, or which are approached by distinct staircases or separate entrances from without :

The "area" of every building shall be deemed to be the superficies of a horizontal section of such building made at the point of its greatest surface, including the external walls and such portion of the party wall as belong to the building, but excluding any attached building the height of which does not exceed the height of the ground storey :

"The base of the wall" shall mean the course immediately above the footings :

"Owner" (*e*) shall apply to every person in possession or receipt either of the whole or of any part of the rents or profits of any land or tenement, or in the occupation of such land or tenement other than as a tenant from year to year or for any less term, or as a tenant at will :

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respect to the payment of expenses incurred by the board in relation to dangerous structures. The former Metropolitan Building Act, 7 & 8 Vict. c. 84, was held to be an Act of a local and personal nature, though the 119th section declared it to be a public Act ; *Richards* v. *Easto* 15 M. & W. 244 ; see now, however, section 108, *post*, as to pleas and evidence by defendants in actions for anything done or intended to be done under the Act.

(*b*) The rules of construction in first schedule, 18 & 19 Vict. c. 122, have no reference to public buildings which must be constructed as approved by the district surveyor, with appeal in case of difference to Metropolitan Board of Works ; *R.* v. *Carruthers*, 33 L. J. M. C. 107. See the Metropolis Management and Building Acts Amendment Act, 1878, referred to in note to section 30, *infra*.

(*c*) As to meaning of "external wall," within a covenant to repair, see *Green* v. *Eales*, 2 Q. B. 225.

(*d*) Where plaintiff was the owner of a boundary wall on his own land, against which he had built some closets, and defendant, his adjoining neighbour, had recently built a substantial structure ; held, that so far as these buildings extended against both sides of the wall, it was a "party wall" within this Act ; *Knight* v. *Pursell*, L. R. 11 Ch. D. 412.

(*e*) See decisions as to meaning of the term "owner," within this interpretation, referred to in note to section 73, *infra*. By the 97th section, *post*, the adjoining and building owners are included in the term "owner."

Section 3.

"Builder" shall apply to and include the master builder or other person employed to execute or who actually executes any work upon any building :

"District surveyor" shall mean every such surveyor who is appointed in pursuance of this Act, or whose appointment is hereby confirmed, and shall include any deputy or assistant surveyor appointed under this Act :

In all cases in which the name of an officer having local jurisdiction in respect of his office is referred to without mention of the locality to which the jurisdiction extends, such reference is to be understood to indicate the officer having jurisdiction in that place within which is situate the building or other subject matter or any part thereof to which such reference applies :

"Person" shall include "a body corporate."

LIMITS OF ACT.

Act to extend to all places within limits defined by 18 & 19 Vict. c. 120.

4. This Act shall extend to all places within the limits of the metropolis as defined by an Act passed in the present session of parliament, intituled "An Act for the better Local Management of the Metropolis" (*a*), and to all other places to which such last-mentioned Act may be extended, unless such places are in making such extension expressly excepted from the operation of this Act ; but nothing herein contained shall affect the exercise of any powers vested by any Act of parliament in the commissioners of sewers of the city of London for the time being (*b*).

Division of Act.

5. This Act shall be divided into five parts :

(1.) The first part relating to the regulation and supervision of buildings :

(2.) The second part relating to dangerous structures :

(3.) The third part relating to party structures :

(4.) The fourth part relating to miscellaneous provisions :

(5.) The fifth part relating to the repeal of former Acts, and to emporary provisions.

PART I.

PART I.

Regulation and supervision of buildings.

REGULATION AND SUPERVISION OF BUILDINGS (*c*).

Buildings, &c., herein named

6. The following buildings and works shall be exempt from the operation of the first part of this Act :

Bridges, piers, jetties, embankment walls, retaining walls, and wharf or quay walls :

(*a*) See section 250 of 18 & 19 Vict. c. 120, *ante*, as to definition of metropolis, and section 249 as to extension thereof by order in council, and section 42 of 25 & 26 Vict. c. 102, *ante*, as to notice before proceedings under the last-mentioned provision.

(*b*) See 11 & 12 Vict. c. 163 and 14 & 15 Vict. c. 12 as to the powers of commissioners of sewers for the city of London.

(*c*) See as to what is a building, *Stevens* v. *Gourley*, note to section 8, *post*.

Her Majesty's royal palaces, and any building in the possession of Her Majesty, her heirs and successors, or employed for Her Majesty's use or service (*d*).

Common gaols, prisons, houses of correction, and places of confinement under the inspection of the inspectors of prisons, and Bethlehem hospital, and the house of occupations adjoining :

The Mansion House, Guildhall, and Royal Exchange of the city of London : (*d*)

The offices and buildings of the governor and company of the Bank of England already erected, and which now form the edifice called "The Bank of England," and any offices and buildings hereafter to be erected for the use of the said governor and company, either on the site of or in addition to and in connexion with the said edifice :

The building of the British Museum :

The offices and buildings of the Honourable East India Company already erected, and any offices or buildings hereafter to be erected, for the use of the said company, on the site of or in addition to such existing offices and buildings :

Greenwich Hospital and the buildings in the parish of Greenwich vested in the commissioners of Greenwich Hospital for the purposes of the said hospital :

All county lunatic asylums, sessions houses, and other public buildings belonging to or occupied by the justices of the peace of the county or city in which the same are situated :

The erections and buildings authorized by an Act passed in the ninth year of the reign of His late Majesty King George the Fourth, for the purposes of a market in the Covent Garden :

The cattle market, with its appurtenances, erected in pusuance of the Metropolitan Cattle Market Act, 1851 :

The buildings belonging to any canal, dock, or railway (*e*) company, and used for the purposes of such canal, dock, or railway, under the provisions of any Act of parliament :

All buildings not exceeding in height thirty feet, as measured from the footings of the walls, and not exceeding in extent one hundred and twenty-five thousand cubic feet, and not being public buildings wholly in one occupation, and distant at least eight

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(*d*) Buildings erected by commissioners of lieutenancy of the city of London for the custody of the arms and stores of militia, fall within the description, and are exempt; *R.* v. *Jay*, 27 L. J. M. C. 25. By the amending Act, 24 & 25 Vict. c. 87, *post*, it is declared that the first part of this Act shall not apply to buildings erected or to be erected by the commissioners of the exhibition of 1851 on their lands, except streets, &c., erected as private dwelling houses. By section 15 of 30 & 31 Vict. c. 40 (Houses of Parliament Act, 1867,) all buildings erected on the lands described in the Act as the prescribed lands, are exempted from the operation of the first part of this Act; and the 2nd section of the Metropolitan Buildings Act, 1871, exempts buildings to be erected by the Corporation of London on the site of Deptford Dockyard for a new foreign cattle market, are also exempted from Part I. of this Act.

(*e*) A railway arch let and used as a stable was held to be exempt; *North Kent Railway Company* v. *Badger*, 27 L. J. M. C. 106. Arches occupied as cellars were held to be buildings under section 7 of Gas Works Clauses Act, 1847; *Thompson* v. *Sunderland Gas Company*, L. R. 2 Ex. D. (C.A.) 429; see *London and Blackwall Railway Company* v. *Limehouse District Board*, 3 K. & J. 123.

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feet from the nearest street or alley, whether public or private, and at the least thirty feet from the nearest buildings and from the ground of any adjoining owner:

All buildings not exceeding in extent two hundred and sixteen thousand cubic feet, and not being public buildings, and distant at least thirty feet from the nearest street or alley, whether public or private, and at least sixty feet from the nearest buildings and from the ground of an adjoining owner:

All party fence walls and greenhouses so far as regards the necessary woodwork of the sashes, doors, and frames:

Openings made into walls or flues for the purpose of inserting therein ventilating valves of a superficial extent not greater than forty square inches, if such valves are not nearer than twelve inches to any timber or other combustible material.

Application of Act, except exemptions before mentioned (*a*).

7. With the exemptions hereinbefore mentioned, this Act shall apply to all new buildings; and whenever mention is herein made of any building, it shall, unless the contrary appears from the context, be deemed to imply a new building.

Building, when deemed to be new.

8. A building shall be deemed to be new wherever the enclosing walls (*b*) thereof have not been carried higher than the footings previously to the said first day of January one thousand eight hundred and fifty-six (*c*). Any other building shall be deemed to be an old building.

Alterations of and additions to old buildings.

9. Any alteration, addition, or other work made or done for any purpose except that of necessary repair not affecting the construction of any external or party wall (*d*) in, to, or upon any old building, or in, to, or upon any new building after the roof has been covered in, shall, to the extent of such alteration, addition, or work, be subject to the regulations of this Act (*e*); and whenever mention is hereinafter made of any alteration, addition, or work in, to, or upon any building, it shall, unless the contrary appears from the context, be deemed to imply an alteration, addition, or work to which this Act applies.

(*a*) Where a person contracted to build according to plans and in conformity with the rules of the Metropolitan Board of Works, and built in contravention of such rules, he was ordered to rebuild; *Cubitt* v. *Smith*, 11 L. T. (N.S.) 298.

(*b*) As to what are not enclosing walls, see *Tear* v. *Freebody*, 4 C. B. (N.S.) 228.

(*c*) As to what is a new building under Local Government Act, 1858, see *Hobbs* v. *Dance*, 43 L. J. M. C. 21.

(*d*) Where an old door-frame was removed, and a new one substituted, the brickwork around it, which was decayed, being reinstated, but the opening for the doorway not being enlarged, this was held not to be a work which affected the construction of an external wall; *Badger* v. *Denn*, 22 J. P. 129. Though the extent of the exception in this section is a fruitful source of contention between builders and district surveyors, there is a great dearth of positive authority upon the subject. The question as to what operations fall within the definition of necessary repair, not affecting the construction of any external or party wall, came before the Westminster Police Court in several cases, the particulars of which are referred to in an article in the 40th vol. of the Justice of the Peace, p. 49, where it was closely and carefully considered.

(*e*) This was held to apply only to buildings which were constructed before 1st June, 1856, *Stevens* v. *Gourley*, 29 L. J. C. P. 1. A shop

Rebuilding old buildings.

10. Whenever any old building has been taken down to an extent exceeding one half of such building, such half to be measured in cubic feet, the rebuilding thereof shall be deemed to be the erection of a new building; and every portion of such old building that is not in conformity with the regulations of this Act shall be forthwith taken down.

Division of old buildings separated by irregular partitions.

11. Whenever any old buildings are separated by timber or other partitions not in conformity with this Act, then, if such partitions are removed to the extent of one-half thereof, such building shall as respects the separation thereof be deemed to be new buildings, and be forthwith divided from each other in the manner directed by this Act.

Walls (*f*).

Structure and thickness of walls.

12. Walls shall be constructed of such substances and of such thickness and in such manner as are mentioned in the first schedule annexed hereto.

Recesses and Openings.

Rules as to recesses and openings.

13. The following rules shall be observed with respect to recesses and openings in walls:

Recesses and openings may be made in external walls, provided,

1. That the backs of such recesses are not of less thickness than eight and a-half inches; and
2. That the area of such recesses and openings do not, taken together, exceed one-half of the whole area of the wall in which they are made:

Recesses may be made in party walls, provided that,

1. The backs of such recesses are not of less thickness than thirteen inches; and
2. That every recess so formed is arched over, and that the area of such recess do not, taken altogether, exceed one-half of the whole area of the wall of the storey in which they are made; and
3. That such recesses do not come within one foot of the inner face of the external walls;

But no opening shall be made in any party wall except in accordance with the rules of this Act:

The word area, as used in this section, shall mean the area of the vertical face, or elevation of the wall, pier, or recess to which it refers.

Miscellaneous.

As to timber in external walls.

14. Loophole frames may be fixed within one inch and a-half of the face of any external wall; but all other woodwork fixed in any

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of wood, without footing of brickwork for a foundation, built on wooden joists laid on the ground, without being let into or fastened to the soil, is a building within the meaning of this Act; *Stevens* v. *Gourley*, *supra*.

(*f*) See definition of several descriptions of walls, section 3, *ante*; and see Metropolis Management and Building Acts Amendment Act, 1878, Part II., section 16, empowering the metropolitan board to make bye-laws with respect to the foundations and sites of houses, and other requirements.

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external wall, except bressummers and story-posts under the same, and frames of doors and windows of shops on the ground story of any building, shall be set back four inches at the least from the external face of such wall.

Rules as to bressummers.

15. The following rules shall be observed with respect to bressummers and timbers :—

1. Every bressummer must have a bearing in the direction of its length of four inches at the least at each end, upon a sufficient pier of brick or stone, or upon a timber or iron story-post fixed on a solid foundation, in addition to its bearing upon any party wall ; and the ends of such bressummer shall not be placed nearer to the centre line of the party wall than four and a-half inches :
2. No bond timber or wood plate shall be built into any party wall, and the ends of any beam or joist bearing on such walls shall be at the least four and a-half inches distant from the centre line of the party walls :
3. Every bressummer bearing upon any party wall must be borne by a templet or corbel of stone or iron tailed through at least half the thickness of such wall, and of the full breadth of the bressummer.

Height and thickness of parapets to external walls.

16. If any gutter, any part of which is formed of combustible materials, adjoins an external wall, then such wall must be carried up so as to form a parapet one foot at the least above the highest part of such gutter, and the thickness of the parapet so carried up must be at the least eight and a-half inches, reckoned from the level of the under side of the gutter plate.

Height of party walls above roof.

17. Every party wall shall be carried up above the roof flat or gutter of the highest building adjoining thereto, to such height as will give a distance of fifteen inches measured at right angles to the slope of the roof, or fifteen inches above the highest part of any flat or gutter, as the case may be ; and every party wall shall be carried up above any turret, dormer, lantern light, or other erection of combustible materials fixed upon the roof or flat of any building within four feet from such party wall, and shall extend at the least twelve inches higher and wider on each side than such erection ; and every party wall shall be carried up above any part of any roof opposite thereto, and within four feet from such party wall.

As to chases in party walls.

18. In a party wall no chase shall be made wider than fourteen inches, nor more than four and a half inches deep from the face of the wall, nor so as to leave less than eight and a half inches of thickness at the back or opposite side thereof, and no chase may be made within a distance of seven feet from any other chase on the same side of the wall.

As to construction of roofs.

19. The roofs of buildings shall be constructed as follows ; that is to say,

1. The flat, gutter, and roof of every building, and every turret, dormer, lantern light, skylight, or other erection placed on the flat or roof thereof, shall be externally covered with slates, tiles, metal, or other incombustile materials, except the doors, door frames, windows, and window frames of such dormers, turrets, lantern lights, skylights, or other erections :
2. The plane of the surface of the roof of a warehouse or other

building used either wholly or in part for purposes of trade or manufacture shall not incline from the external or party walls upwards at a greater angle than forty-seven degrees with the horizon.

Rules as to chimnies and flues.

20. The following rules shall be observed as to chimnies and flues :

1. Chimnies built on corbels of brick, stone, or other incombustile materials may be introduced above the level of the ceiling of the ground story if the work so corbelled out does not project from the wall more than the thickness of the wall, but all other chimnies shall be built on solid foundations, and with footings similar to the footings of the wall against which they are built :
2. Chimnies and flues having proper doors of not less than six inches square may be constructed at any angle, but in every other chimney or flue the angles shall be constructed of an obtuseness of not less than one hundred and thirty degrees, and shall be properly rounded :
3. An arch of brick or stone or a bar of wrought iron must be built over the opening of every chimney to support the breast thereof, and if the breast projects more than four and a half inches from the face of the wall, and the jamb on either side is of less width than seventeen and a half inches, the abutments must be tied in by an iron bar or bars turned up and down at the ends and built into the jambs for at least eight and a half inches on each side :
4. The inside of every flue, and the back or outside, unless forming part of the outer face of an external wall, must be rendered, pargeted, or lined with fireproof piping :
5. The jambs of every chimney must at the least be eight and a half inches wide on each side of the opening thereof :
6. The breast of every chimney, and the front, withe, partition, and back of every flue, must at the least be four inches in thickness :
7. The back of every chimney opening, from the hearth up to the height of twelve inches above the mantel, must at the least be eight and a half inches thick if in a party wall, or four and a half inches thick if not in a party wall :
8. The thickness of the upper side of every flue, when its course makes, with the horizon, an angle of less than forty-five degress, must be at the least eight and a half inches :
9. Every chimney shaft shall be carried up in brick or stone work all round, at the least four inches thick, to a height of not less than three feet above the roof, flat, or gutter adjoining thereto, measured at the highest point in the line of junction with such roof, flat, or gutter :
10. The brickwork or stonework of any chimney shaft, excepting that of the furnace of any steam engine, brewery, distillery, or manufactory, shall not be built higher above the roof, flat, or gutter adjoining thereto, measured from the highest point in the line of junction with such roof, flat, or cutter, than a height equal to six times the least width of such chimney shaft at the level of such highest point in the line of junction, unless such chimney shaft is built with and bonded to another chimney shaft not in the same line with the first, or otherwise rendered secure :
11. There shall be laid, level with the floor of every story, before

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the opening of every chimney, a slab of stone, slate, or other incombustible substance, at the least twelve inches longer than the width of such opening, and at the least eighteen inches wide in front of the breast thereof :

12. On every floor, except the lowest floor, such slab shall be laid wholly upon stone or iron bearers, or upon brick trimmers ; but on the lowest floor it may be bedded on the solid ground :
13. The hearth or slab of every chimney shall be bedded wholly on brick, stone, or other incombustible substance, and shall be solid for a thickness of seven inches at the least beneath the upper surface of such hearth or slab :
14. No flue shall be built against any party structure (*a*) unless a withe is properly secured thereto, at the least four inches in thickness :
15. No chimney breast or shaft built with or in any party wall shall be cut away unless the district surveyor certifies that it can be done without injuriously affecting the stability of any building :
16. No chimney shaft, jamb, breast, or flue shall be cut into except for the purposes of repair, or doing some one or more of the following things :
    - Of letting in or removing or altering flues, pipes, or funnels for the conveyance of smoke, hot air, or steam, or of letting in, removing, or altering, smoke jacks :
    - Of forming openings for soot doors, such openings to be fitted with a close iron door and frame :
    - Of making openings for the insertion of ventilating valves, subject to the following restriction, That no opening shall be made nearer than twelve inches to any timber or combustible substance ;
17. No timber or woodwork shall be placed,
    - In any wall or chimney breast nearer than twelve inches to the inside of any flue or chimney opening ;
    - Under any chimney opening within eighteen inches from the upper surface of the hearth of such chimney opening ;
    - Within two inches from the face of the brickwork or stonework about any chimney or flue, where the substance of such brickwork or stonework is less than eight and a half inches thick, unless the face of such brickwork or stonework is rendered ;

And no wooden plugs shall be driven nearer than six inches to the inside of any flue or chimney opening, nor any iron holdfast or other iron fastening nearer than two inches thereto.

Rules as to close fires and pipes for conveying vapour, &c.

21. The following rules shall be observed as to close fires, and pipes for conveying heated vapour or water ; that is to say,

1. The floor under every oven or stove used for the purpose of trade or manufacture, and the floor around the same for a space of eighteen inches, shall be formed of materials of an incombustible and non-conducting nature :
2. No pipe for conveying smoke, heated air, steam, or hot water shall be fixed against any building on the face next to any street, alley, mews, or public way :

(*a*) See definition of "party structure" section 3, *ante*.

3. No pipe for conveying heated air or steam shall be fixed nearer than six inches to any combustible materials :
4. No pipe for conveying hot water shall be placed nearer than three inches to any combustible materials :
5. No pipe for conveying smoke or other products of combustion shall be fixed nearer than nine inches to any combustible material :

And if any person fails in complying with the rules of this section he shall for each offence incur a penalty not exceeding twenty pounds, to be recovered before a justice of the peace (*b*).

Rules as to accesses and stairs in certain buildings.

22. The following rules shall be observed with respect to accesses and stairs :

In every public building (*c*), and in every other building containing more than one hundred and twenty-five thousand cubic feet, and used as a dwelling house for separate families, the floors of the lobbies, corridors, passages, and landings, and also the flights of stairs, shall be of stone or other fire-proof material, and carried by supports of a fire-proof material.

Rules as to habitable rooms.

23. The following rules shall be observed with respect to habitable rooms in any building ; that is to say,

1. Every habitable room hereafter constructed in any building, except rooms in the roof thereof and cellars and underground rooms, shall be in every part at the least seven feet in height from the floor to the ceiling :
2. Every habitable room hereafter constructed in the roof of every building shall be at the least seven feet in height from the floor to the ceiling throughout not less than one half the area of such room :
3. Cellars and underground rooms shall be constructed in manner directed by the said Act for the better local management of the metropolis (*d*) :

And whosoever knowingly suffers any room that is not constructed in conformity with this section to be inhabited shall, in addition to any other liabilities he may be subject to under this Act, incur a penalty not exceeding twenty shillings for every day during which such room is inhabited (*e*) ; and any room in which any person passes the night shall be deemed to be inhabited within the meaning of this Act.

As to party arches over public ways.

24. Every party arch, and every arch or floor over any public way, or any passage leading to premises in other occupation, shall be formed of brick, stone, or other incombustible materials : If an arch of brick or stone is used, it shall, in cases where its span does not exceed nine feet, be of the thickness of four and a half inches at the least, but when its span exceeds nine feet, be of the thickness of eight

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(*b*) As to recovery of penalties, see section 103, and as to their application, section 104.

(*c*) See section 3, *ante*.

(*d*) See provisions as to underground rooms and cellars, 18 & 19 Vict. c. 120, s. 103, and City of London Sewers Act, 11 & 12 Vict. c. 163, s. 11, *et seq.*

(*e*) As to recovery of penalties, see section 103; and see section 62 of 25 & 26 Vict. c. 102, *ante*. See as to conditions to construction of arches and cellars under street, 18 & 19 Vict. c. 120, s. 101; and see section 125 of City of London Sewers Act, 11 & 12 Vict. c. 163.

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and a half inches at the least: If an arch or floor of iron or other incombustible material is used, it shall be constructed in such manner as may be approved by the district surveyor.

As to arches under public ways.

25. Every arch under any public way shall be formed of brick, stone, or other incombustible materials: If an arch of brick or stone is used, it shall, in cases where its span does not exceed ten feet, be of the thickness of eight and a half inches at the least; where its span does not exceed fifteen feet, it shall be of the thickness of thirteen inches at least; and where its span exceed fifteen feet, it shall be of such thickness as may be approved by the district surveyor: If an arch or other construction of iron or other incombustible material is used, it shall be constructed in such manner as may be approved by the district surveyor (*a*).

Rules as to projections.

26. The following rules shall be observed as to projections (*b*):

1. Every coping, cornice, facia, window dressing, portico, balcony, verandah, balustrade, and architectural projection or decoration whatsoever, and also the eaves or cornices to any overhanging roof, except the cornices and dressings to the window fronts or shops, and except the eaves and cornices to detached and semi-detached dwelling houses distant at least fifteen feet from any other building, and from the ground of any adjoining owner, shall, unless the metropolitan board otherwise permit (*c*) be of brick, tile, stone, artificial stone, slate, cement, or other fire-proof material:
2. In streets or alleys of a less width than thirty feet, any shop front may project beyond the external wall of the building to which it belongs for five inches and no more, and any cornice of any such shop front may project thirteen inches and no more; and in any street or alley of a width greater than thirty feet, any shop front may project ten inches and no more, and the cornice may project for eighteen inches from the external walls, but no more:
3. No part of the woodwork of any shop front shall be fixed nearer than four and a half inches from the line of junction of any adjoining premises, unless a pier or corbel of stone, brick, or other fire-proof material, four and a half inches wide at the least, is built or fixed next to such adjoining premises as high as such woodwork is fixed, and projects an inch at the least in front of the face thereof:
4. The roof, flat, or gutter of every building, and every balcony, verandah, shop front, or other projection, must be so arranged and constructed, and so supplied with gutters and pipes, as to

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(*a*) Under 18 & 19 Vict. c. 120, s. 101, no vault, arch, or cellar can be made under any street, without the consent of the vestry or district board.

(*b*) Compare as to buildings projecting beyond the regular line, section 143 of Metropolis Local Management Act (now repealed), and the substituted enactment, section 75 of 25 & 26 Vict. c. 102, *ante*. See as to projections under the first-mentioned Act, sections 119, 120, and section 74, of 25 & 26 Vict. c. 102. And see 57 Geo. 3, c. 29, s. 72, *post*. See also City Sewers Act, 11 & 12 Vict. c. 163, ss. 154, 186, 188. The Building Act does not take away the power of justices to adjudicate on a complaint under 57 Geo. 3, c. 29, in case of encroachments on public highways by projections from buildings; *R.* v. *Ingham*, 17 Q. B. 884, and see *R.* v. *Pratt*, 24 L. T. 235.

(*c*) See rules of metropolitan board referred to in note (*e*), *infra*.

prevent the water therefrom from dropping upon or running over any public way :

5. Except in so far as is permitted by this section in the case of shop fronts, and with the exception of water pipes and their appurtenances, copings, cornices, facias, window dressings, and other like architectural decorations, no projection from any building shall extend beyond the general line of fronts in any street (*d*), except with the permission of the metropolitan board of works hereinafter mentioned (*e*).

Rules as to the separation of buildings, and limitation of their areas.

27. The following rules shall be observed as to the separation of buildings, and limitation of their areas :

1. Every building shall be separated by external or party walls from any adjoining building :
2. Separate sets of chambers or rooms tenanted by different persons shall, if contained in a building exceeding three thousand six hundred square feet in area, be deemed to be separate buildings, and be divided accordingly, so far as they adjoin vertically by party walls, and so far as they adjoin horizontally by party arches or fire-proof floors :
3. If any building in one occupation is divided into two or more tenements, each having a separate entrance and staircase, or a separate entrance from without, every such tenement shall be deemed to be a separate building for the purposes of this Act :
4. Every warehouse, or other building used either wholly or in part for the purposes of trade or manufacture, containing more than two hundred and sixteen thousand cubic feet, shall be divided by party walls in such manner that the contents of each division thereof shall not exceed the above-mentioned number of cubic feet (*f*).

Rules as to uniting buildings.

28. The following rules shall be observed as to uniting buildings (*g*) ;

1. No buildings shall be united unless they are wholly in the same occupation :
2. No buildings shall be united, if when so united they will, con-

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(*d*) It is a question of fact for the magistrate whether the locality in question is or is not a street ; *Newman* v. *Baker*, 8 C. B. (N.S.) 200. See *R.* v. *Dayman*, 7 E. & B. 672. See cases cited under section 143 of Metropolis Local Management Act, 1855.

(*e*) Therefore balconies, verandahs, balustrades, and the like architectural projections require the permission of that board for their construction. See rules of metropolitan board relative to applications under this enactment, and 75th section of Metropolis Management Amendment Act, 1862. See also *R.* v. *Justices of Llanfillo*, 15 L. T. (N.S.) 277.

(*f*) See the amending Act, 13 & 14 Vict. c. 52, *post*, providing that these rules shall not apply to buildings to be used for the manufacture of machinery and boilers of steam vessels, subject to certain conditions in the proviso.

(*g*) Where two houses Nos. 66 and 67 in A. had been united by means of an opening in the party wall between them, and B. being the occupier of these two houses, and of No. 6 in L. lane, made two openings in the wall dividing No. 6 and No. 67 ; held, that these openings must be made in accordance with the requirements of this section ; *Ashby* v. *Woodthorpe*, 33 L. J. M. C. 68. This only applies to existing buildings, and not to a building added to an old one ; *Scott v. Legg* 41 J. P. 40 ; 773 C. A. ; L. R. Ex. D. (C.A.) 39.

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sidered as one building only, be in contravention of any of the provisions of this Act :

3. No opening shall be made in any party wall dividing buildings, which, if taken together, would contain more than two hundred and sixteen thousand cubic feet, except under the following conditions :

Such opening shall not exceed in width seven feet or in height eight feet :

Such opening shall have the floor, jambs, and head formed of brick, stone, or iron, and be closed by two wrought iron doors, each one fourth of an inch thick in the panel, at a distance from each other of the full thickness of the wall, fitted to rebated frames, without woodwork of any kind ;

4. Whenever any buildings which have been united cease to be in the same occupation, any openings made in the party walls dividing the same shall be stopped up with brick or stone work of the full thickness of the wall itself, and properly bonded therewith.

As to open spaces near dwelling houses.

29. Every building used or intended to be used as a dwelling house, unless all the rooms can be lighted and ventilated from a street or alley adjoining, shall have in the rear or on the side thereof an open space exclusively belonging thereto of the extent at least of one hundred square feet.

Construction of public buildings.

30. Notwithstanding anything herein contained, every public building (*a*), including the walls, roofs, floors, galleries, and staircases, shall be constructed in such manner as may be approved by the district surveyor, or, in the event of disagreement, may be determined by the metropolitan board ; and, save in so far as respects the rules of construction, every public building shall throughout this Act be deemed to be included in the term building, and be subject to all the provisions of this Act, in the same manner as if it were a building erected for a purpose other than a public purpose.

DISTRICT SURVEYORS.

Buildings to be supervised by district surveyors.

31. With the exemption hereinbefore mentioned (*b*), every building, and every work done to, in, or upon any building, shall be subject to the supervision of the district surveyor appointed to the district in which the building is situate.

(*a*) The rules in the Act do not apply to a public building such as a church, but such buildings must be constructed in such a manner as may be approved by the district surveyor, or in the event of disagreement, be determined by the metropolitan board ; *R.* v. *Carruthers*, 33 L. J. M. C. 107. The 41 & 42 Vict. c. 32, s. 11, *post*, empowers the metropolitan board to require the owners of houses or other places of public resort, &c., in structures where special danger from fire may result to the public, to make alterations therein under a penalty of £50.

(*b*) See exemptions, section 6, *ante*. By section 9, every work done for any purpose, except that of necessary repair, not affecting the construction of any external or party wall in, to, or upon, any old building, or in, to, or upon any new building after the roof has been covered in, is made subject to the regulations of this Act. The *exemptions*, properly so called, are contained in the 6th section. The 9th section describes what shall be *excepted* from the operation of the Act ; see the case of *Badger* v. *Denn*, note to section 9, *ante*.

Power to metropolitan board of works established under 18 & 19 Vict. c. 120.

32. The following things may be done by the metropolitan board of works, established by the said Act for the better local management of the metropolis, by order, at their discretion; that is to say,

1. They may alter the limits of any district, or unite any two or more districts together, and in any such case place such altered district under the supervision of any existing or of any future district surveyor, with power from time to time to alter any district so made, and do all such matters and things as are necessary for carrying into effect the power hereby given:
2. They may dismiss any existing district surveyor, with the consent of one of Her Majesty's principal secretaries of state; they may suspend any such surveyor as last aforesaid; they may dismiss or suspend any future district surveyor; and in case of any suspension or during any vacancy they may appoint a temporary substitute:
3. Whenevery any vacancy occurs in the office of any existing or future district surveyor they may appoint another qualified person in his place:
4. They may pay such amount of compensation as they think fit to any district surveyor who may be deprived of his office, in pursuance of the power hereby given of altering the limits of districts:

But, subject to the provisions herein contained, the several places which at the time when this Act comes into operation are constituted districts under an Act passed in the eighth year of the reign of Her present Majesty, chapter eighty-four, and intituled "An Act for regulating the construction and use of buildings in the metropolis and its neighbourhood," for the purposes of that Act, shall continue to be districts for the purposes of this Act, and the several persons who at the time when this Act comes into operation are district surveyors under the provisions of the said Act shall continue to be district surveyors under this Act.

Examination by institute of British architects (*c*).

33. The institute of British architects may from time to time cause to be examined, by such persons and in such manner as they think fit, all candidates presenting themselves for the purpose of being examined as to their competency to perform the duties of district surveyor, and shall grant certificates of competency to the candidates found deserving of the same; and no person who has not already filled the office of district surveyor, or has not already obtained a certificate of competency in pursuance of the said Act of the eighth year of the reign of Her present Majesty, chapter eighty-four, shall be qualified to be appointed to that office, unless he has received a certificate of competency from the said institute of British architects, or has been examined in such other manner as the said metropolitan board may direct, and been found competent in such examination.

District surveyor to have and maintain an office.

34. Every district surveyor shall have and maintain an office at his own expense in such part of his district as may be approved by the metropolitan board of works.

District surveyor may

35. If any district surveyor is prevented by illness, infirmity, or any other unavoidable circumstance from attending the duties of his

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(*c*) See section 66 of former Building Act, 7 & 8 Vict. c. 84, as to examination and certificates of qualification of surveyors of metropolitan building.

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office, he may, with the consent of the metropolitan board, of works, appoint some other person as his deputy to perform all his duties for such time as he may be prevented from executing them.

appoint deputy, with consent.

Assistant surveyor may be appointed on emergency.

36. If at any time it appears to the metropolitan board of works that, on account of the pressure of business in any district, or any other account, the surveyor of that district cannot discharge his duties promptly and efficiently, then such board may direct any other district surveyor to assist the surveyor of such district in the performance of his duties, or appoint some other person to give such assistance, and such assistant surveyor shall be entitled to receive all fees payable in respect of the services performed by him.

District surveyor not to act in case of works under his professional superintendence.

37. If any building is executed, or any work done to, in, or upon any building, by or under the superintendence of any district surveyor acting professionally or on his own private account, it shall not be lawful for such surveyor to survey any such building for the purpose of this Act, or to act as district surveyor in respect thereof or in any matter connected therewith, but it shall be his duty to give notice thereof to the said metropolitan board, who shall then appoint some other district surveyor to act in respect of such matter.

NOTICES TO DISTRICT SURVEYORS.

Notices to be given to district surveyor by builder (*a*).

38. Two days before the following acts or event, that is to say,

Two days before any building, or any work to, in, or upon any building is commenced, and also, if the progress of any such building or work is after the commencement thereof suspended for any period exceeding three months, two days before such building or work is resumed, and also if during the progress of any such building or work the builder employed thereon is changed, then two days before any new builder enters upon the continuance of such building or work, it shall be the duty of the builder engaged in building or rebuilding such building, or in executing such work, or in continuing such building or work, to give to the district surveyor notice in writing stating the situation, area, and height, and intended use of the building or buildings about to be commenced, or to, in, or upon which any work is to be done, and the number of such buildings if more than one, and also the particulars of any such proposed work, and stating also his own name and address, but any works to, in, or upon the same building that are in progress at the same time may be included in one notice.

District surveyor to cause rules of this Act to be observed.

39. Every district surveyor shall, upon the receipt of any such notice as aforesaid, and also upon any work affected by the rules of this Act, but in respect of which no notice has been given, being observed by or made known to him, and also from time to time during the progress of any works affected by the rules and directions of this Act, as often as may be necessary for securing the due observance of

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(*a*) See as to limitation of time for proceedings by district surveyor where due notice has not been given, section 105; as to notices to vestries and district boards before beginning to lay or dig foundations of new buildings, see 18 & 19 Vict. c. 120. s. 76, and 25 & 26 Vict. c. 102, s. 88, *ante*; and in case of buildings within the city of London, 11 & 12 Vict. c 163, s. 63. See section 44, *post*, as to proceeding in cases of emergency. Also Metropolis Management and Buildings Acts Amendment Act, 1878, as to deposit of plans, &c.

such rules, survey any building or work hereby placed under their supervision, and cause all the rules of this Act to be duly observed.

Notice to be evidence of intended works.

40. Every notice given in pursuance of this Act shall be deemed, in any question relative to any building or work, to be *primâ facie* evidence as against such builder of the nature of the building or work proposed to be built or done.

Penalty on builders neglecting to give notice.

41. If any builder neglects to give notice in any of the cases aforesaid, or execute any works of which he is hereby required to give notice before giving the same, or having given due notice of any works executes the same before the expiration of two days from the time of giving such notice, such builder shall for every such offence incur a penalty not exceeding twenty pounds, to be recovered before a justice of the peace (*b*).

District surveyor may enter and inspect buildings affected by this Act.

Penalty for refusal.

42. At all reasonable times during the progress of any building or work affected by this Act it shall be lawful for the district surveyor to enter and inspect such building or work; and if any person refuse to admit such surveyor to inspect such building or work, or refuses or neglects to afford such surveyor all reasonable assistance in such inspection, in every such case the offender shall incur for each offence a penalty not exceeding twenty pounds, to be recovered before a justice of the peace.

District surveyor may enter building to ascertain as to exempted buildings.

43. The district surveyor may at all reasonable times enter any premises, with the exception of buildings hereinbefore exempted by name, for the purpose of ascertaining whether any buildings erected in such premises are in such a situation or possess such characteristics as are hereinbefore required in order to exempt them from the operation of this Act, and he may do all such things as are necessary for the above purpose; and if any person refuses to admit such surveyor to enter such premises or to inspect any such building, or neglects to afford to him all reasonable assistance in such inspection, in every such case the offender shall incur for each offence a penalty not exceeding twenty pounds to be recovered before a justice of the peace (*c*).

In case of emergency works may be commenced without notice.

44. If by reason of any emergency any act or work is required to be done immediately, or before notice can be given as aforesaid, then it shall be lawful to do the act or work so required to be done, upon condition that before the expiration of twenty-four hours after such act or work has been begun notice thereof is given to the district surveyor.

Proceedings by District Surveyors in case of Irregularity.

Notice by district surveyor in case of irregularity.

45. In the following cases, that is to say,
If in erecting any building or in doing any work to, in, or upon any building, anything is done contrary to any of the rules of this Act, or anything required by this Act is omitted to be done; or
In cases where due notice has not been given,—

(*b*) As to recovery of penalties, see section 103.
(*c*) See note (*b*), *supra*.

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If the district surveyor, on surveying or inspecting any building or work, finds that the same is so far advanced that he cannot ascertain whether anything has been done contrary to the rules of this Act, or whether anything required by the rules of this Act has been omitted to be done;

In every such case the district surveyor shall give to the builder engaged in erecting such building, or in doing such work, notice in writing requiring such builder, within forty-eight hours from the date of such notice, to cause anything done contrary to the rules of this Act to be amended, or to do anything required to be done by this Act, but which has been omitted to be done, or to cause so much of any building or work as prevents such district surveyor from ascertaining whether anything has been done or omitted to be done as aforesaid to be to a sufficient extent cut into, laid open, or pulled down.

On non-compliance with notice, justice to summon builder, and make order to comply with requisition.

46. If the builder to whom such notice is given makes default in complying with the requisition thereof within such period of forty-eight hours, the district surveyor may cause complaint of such non-compliance to be made before a justice of the peace, and such justice shall thereupon issue a summons requiring the builder so in default to appear before him; and if upon his appearance, or in his absence, upon due proof of the service of such summons, it appears to such justice that the requisitions made by such notice or any of them are authorized by this Act, he shall make an order on such builder commanding him to comply with the requisitions of such notice or any of such requisitions that may in his opinion be authorized by this Act, within a time to be named in such order.

Penalty on non-compliance with order of justice.

47. If such order is not complied with, the builder on whom it is made shall incur a penalty not exceeding twenty pounds a day, to be recovered before a justice of the peace, during every day of the continuance of such noncompliance, and in addition thereto the district surveyor may, if he thinks fit, proceed with a sufficient number of workmen to enter upon the premises, and do all such things as may be necessary for enforcing the requisitions of such notice, and for bringing any building or work into conformity with the rules of this Act, and all expenses incurred by him in so doing and in any such proceedings as aforesaid, may be recovered from the builder on whom such order was made, in a summary manner, before a justice of the peace, or may be recovered from the owner of the premises in the same manner in which expenses incurred by the commissioners hereinafter named in respect of dangerous buildings are hereinafter directed to be recovered from any owner (*a*); and if the owner cannot be found, or if, on demand, he refuses or neglects to pay the aforesaid expenses, the district surveyor shall have the same power of taking and selling the building in respect of which the order is made, and of applying the proceeds, as is thereby given to the commissioners.

Penalty on workmen, &c., doing anything contrary to rules of Act.

48. If any workman, labourer, servant or other person employed in or about any building, wilfully and without the privity or consent of the person causing such work to be done, does anything in or about such building contrary to the rules of this Act, he shall for each such offence incur a penalty not exceeding fifty shillings (*b*).

(*a*) See sections 73, 74, and 97.
(*b*) See section 103.

Fees of District Surveyors.

Payments to district surveyors in respect of matters in first part of second schedule.

49. There shall be paid to the district surveyors (*c*) in respect of the several matters specified in the first part of the second schedule hereto, the fees therein specified (*d*), or such other fees, not exceeding the amounts therein specified, as may from time to time be directed by the metropolitan board of works; but one fee only shall be chargeable with respect to any such works done in, to, or upon any building as are in pursuance of the provisions hereinbefore contained included in one notice; and if in consequence of any reduction being made by the said metropolitan board in the amount of the said scheduled fees the income of any existing district surveyor is diminished, the metropolitan board shall grant to him compensation in respect of such diminution.

Metropolitan board may appoint special fees for services not provided for.

50. If any special service is required to be performed by the district surveyor under the first part of this Act, for which no fee is specified in the said schedule, the metropolitan board of works may order such fee to be paid for such service as they think fit, and the district surveyor shall have the same remedy for recovering such special fee as if the same were expressly named in the said schedule.

Periods when surveyors entitled to fees.

51. At the expiration of the following periods, that is to say,

of one month after the roof of any building surveyed by any district surveyor under this Act has been covered in,

of fourteen days after the completion of any such work as is by this Act placed under the supervision of the district surveyor,

of fourteen days after any special service in respect of any building has been performed,

the district surveyor shall be entitled to receive the amount of fees due to him from the builder employed in erecting such building, or in doing such work, or in doing any matter in respect of which any special service has been performed by the surveyor, or from the owner (*e*) or occupier of the building so erected or in respect of which such work has been done or service performed; and if any such builder, owner, or occupier refuses to pay the same, such fees may be recovered in a summary manner before a justice of the

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(*c*) By section 3 this includes any deputy or assistant surveyor appointed under the Act.

(*d*) Where a builder was employed to construct a series of arches for cellars under a public street or streets surrounding a vacant piece of land to be let for building, the district surveyor was decided to be entitled to a fee of 10*s.* in respect of each distinct building to which any given number of the arches is to be appropriated; a matter of fact to be determined by the magistrate. His decision is subject to appeal under 20 & 21 Vict. c. 43, notwithstanding the appeal clause, section 106; *Power* v. *Wigmore*, L. R. 7 C. P. 386. See as to construction of section 79 of former Building Act, 7 & 8 Vict. c. 84, subjecting surveyor, &c., demanding, or wilfully receiving higher fees than he was entitled to; *R.* v. *Badger*, 6 El. & Bl. 137. See now powers of the metropolitan board under section 54, *post*, in case of unauthorized fees.

(*e*) See definition of owner, section 3. The ground landlord is not an *owner* within this section and section 3; *Evelyn* v. *Whichcord*, 27 L. J. M. C. 211.

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peace (*a*) upon its being shown to the satisfaction of such justice that a proper bill specifying the amount of such fees was delivered to such builder, owner, or occupier, or sent to him in a registered letter addressed to his last known residence.

RETURNS BY DISTRICT SURVEYORS.

District surveyor to make monthly returns to metropolitan board of works.

52. Every district surveyor shall, within seven days after the first day of every month, make a return to the metropolitan board of works, in such manner as they may appoint, of all notices and complaints received by him relative to the business of his district, and the results thereof, and of all matters brought by him before any justice of the peace, and of all the several works supervised and special services performed by him in the exercise of his office within the previous month, and of all fees charged or received in respect thereof, and specify in such return the description and locality of every building built, rebuilt, enlarged, or altered, or on which any work has been done under his supervision, with the particular nature of every work in respect of which any fee has been charged or received.

Return duly signed to be a certificate that works are agreeable to Act.

53. Every such return shall be signed by such surveyor, and shall be deemed to be a certificate that all the works enumerated therein as completed have been done in all respects agreeably to this Act, according to the best of his knowledge and belief, and that they have been duly surveyed by him.

Superintending architect to audit accounts of fees charged by district surveyors, and to report in case of excess.

54. The officer hereinafter mentioned as the superintending architect of metropolitan buildings, or such other officer as the metropolitan board of works appoint, shall from time to time examine the said monthly returns made by the district surveyors; and in case any fees therein specified appear to such officer to be unauthorized by this Act, or to exceed in amount the rates hereby made payable, or in case any such account appears to be in any respect fraudulent or untrue, he shall make his report in writing to that effect to the metropolitan board of works, who shall thereupon take such steps in the matter as they deem expedient.

POWERS OF METROPOLITAN BOARD OF WORKS.

Power for metropolitan board of works to modify rules.

55. The metropolitan board of works may, by order, made with the consent of Her Majesty in council, alter, in such manner as they may think fit, the rules for the regulation of the thickness of walls contained in the first schedule hereto.

Buildings to which rules of

56. Whenever any builder is desirous of erecting any iron building, or any other building to which the rules of this Act are in-

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This means the owner for the time being, when the fees became due; *Tubb* v. *Good*, 39 L. J. M. C. 135; L. R. 5 Q. B. 443.

Where the owner in fee of building land agreed to grant leases for 99 years, and the lessee built houses thereon, it was held that the lessee and not the owner in fee was the owner within this Act, and liable to the fees; *Caudwell* v. *Hanson*, L. R. 7 Q. B. 55.

(*a*) See section 103. The decision of the justice is the subject of appeal under 20 & 21 Vict. c. 43; *Power* v. *Wigmore*, note to section 49, *ante*.

applicable (*b*), he shall make an application to the metropolitan board of works, stating such desire, and setting out a plan of the proposed building, with such particulars as to the construction thereof as may be required by the said board; and the latter, if satisfied with such plan and particulars, shall signify their approval of the same, and thereupon such building may be constructed according to such plan and particulars; but it shall not be lawful for such board to authorize any warehouse or other building used either wholly or in part for the purposes of trade or manufacture to be erected of greater dimensions than two hundred and sixteen thousand cubic feet, unless it is divided by party walls in manner hereinbefore required.

Act are inapplicable.

57. The said metropolitan board may, for the purpose of regulating the proceedings of such applicants as aforesaid, from time to time issue such general rules as to the time and manner of making such applications, as to the plans to be presented, as to the expenses to be incurred, and as to any other matter or thing connected therewith, as they may think fit.

Power of metropolitan board to make general rules.

58. The approval by the metropolitan board of works of any plans or particulars, in pursuance of the foregoing provisions, shall be signified by writing under the hand of the superintending architect of metropolitan buildings, and countersigned by the chairman of such board, or by any other officer appointed by the board.

Approval of board how signified.

59. The said metropolitan board may from time to time prepare or sanction forms of the various notices required by this Act, and may from time to time make such alterations therein as they deem requisite; and they shall cause every such form to be sealed with the seal of the board, or marked with some other distinguishing mark; and any notice made in a form sanctioned by the board shall in all proceedings be held sufficient in law.

Board to issue forms of notices.

60. All expenses incurred in and about the obtaining such approval of the metropolitan board of works as aforesaid shall be paid by the builder to the said superintending architect, or to such other person as the said board may appoint, and in default of payment may be recovered in a summary manner.

Expenses of orders to be borne by builders (*c*).

(*b*) By a regulation of the Metropolitan Board of Works, all builders or others who may be desirous of erecting any chimney-shaft of a steam-engine brewery, distillery, or manufactory, or any iron building or other building to which the rules of this Act are inapplicable, shall, before commencing any such building, make an application to the board requesting their approval thereof, setting out a plan and section (with all scantlings figured) of the proposed building, and such other necessary particulars as may be required by the board. When a chimney-shaft is applied for the arrangements to be made for the consumption of the smoke from the furnaces with reference to the Sanitary Act of 1866, must be shown on plan.

By section 16 of Metropolis Management and Building Acts Amendment Act, 1878, the board may provide for the due observance of bye-laws, by enacting such provisions as to the deposit of plans and sections of public buildings, and buildings to which section 58 applies, with other powers, See the Act, *post*.

(*c*) By a regulation of the Metropolitan Board of Works, on deposit of applications under section 56 a fee of five shillings must be paid into the

PART I.

Section 61.

District surveyor to see plans carried into execution (*a*).

61. A copy of any plans and particulars, approved by the metropolitan board of works, shall be furnished to the surveyor within whose district the building to which such plans and particulars relate is situate, and thereupon it shall be the duty of such district surveyor to ascertain that the same is built in accordance with the said plans and particulars.

Power to metropolitan board to appoint superintending architect and clerks.

62. The metropolitan board of works may, for the purpose of aiding in the execution of this Act, appoint some fit person, to be called the "Superintending Architect of Metropolitan Buildings," together with such number of clerks as they think fit; such architect and clerks shall be removable by the said metropolitan board, and shall perform such duties as the said board direct; but it shall not be lawful for any superintending architect to practise as an architect, or to follow any other occupation.

Superintending architect may appoint deputy, with consent.

63. If the superintending architect is prevented by illness, infirmity, or any other unavoidable circumstance from attending to the duties of his office, he may, with the consent of the metropolitan board of works, appoint some other person as his deputy to perform all his duties for such time as he may be temporarily prevented from executing them.

Salaries to architect and clerks.

64. There shall be paid to such superintending architect and clerks such salaries as the said metropolitan board may from time to time direct.

EXPENSES.

Power of metropolitan board to pay salaries.

65. The said metropolitan board may at any time hereafter, by order, cause such fixed salary as they may determine to be paid to any district surveyor by way of remuneration instead of fees, provided the amount of such remuneration be not less than the amount of the average of the fees for the last three years; and thereupon such surveyor shall pay all fees received by him under this Act into the hands of the said superintending architect.

Moneys received by superintending architect to be paid to the metropolitan board.

66. All moneys received by the superintending architect in pursuance of this Act shall be accounted for and paid by him into the hands of the treasurer of the said metropolitan board, at such time and in such manner as the said board may direct.

Metropolitan board may pay salaries out of rates.

67. The said metropolitan board may at any time hereafter provide, either wholly or partially, for the payment of salaries to the district surveyors, or to any of them, out of the rates (*b*) leviable by such board, in pursuance of the said Act for the better local manage-

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hands of the cashier of the board, and a further fee of five shillings on obtaining the order of the board approving the design of the building, and in no case will the work be allowed to proceed until the fees are paid.

(*a*) This provision seems intended to incorporate the 45th and subsequent sections, relating to proceedings by district surveyors in case of irregularity.

By the regulation of the metropolitan board, in the event of the sanction of the board, duplicate drawings or tracings on cloth must be supplied by the applicant for transmission to the district surveyor for his guidance.

(*b*) See 171st section, *et seq.*, of Metropolis Local Management Act, 1855, and section 5 of Metropolis Management Amendment Act, 1862.

ment of the metropolis, and may thereupon abolish or reduce any fees hereby made payable to the district surveyors.

Expenses, how borne.

68. All expenses of carrying into execution this Act, not hereby otherwise provided for, shall be deemed to be expenses incurred by the said metropolitan board in the execution of the said Act for the better local management of the metropolis, and shall be raised and paid accordingly (*c*).

PART II.

DANGEROUS STRUCTURES.

Survey to be made of dangerous structures. 8 Vict. c. 84, s. 40 (*d*).

69. Whenever it is made known to the commissioners hereinafter named that any structure (including in such expression any building, wall, or other structure, and anything affixed to or projecting from any building, wall, or other structure), is in a dangerous state, such commissioners shall require a survey of such structure to be made by the district surveyor, or by some other competent surveyor, and it shall also be the duty of the district surveyor to make known to the said commissioners any information he may receive with respect to any structure being in such state as aforesaid.

Definition of "commissioners.

70. In cases where any such structure is situate within the city of London or the liberties thereof, hereinafter included under the expression "the city of London," the expression "the commissioners" shall mean "the commissioners of sewers of the city of London;" but when such structure is situate elsewhere it shall mean "the commissioners of police of the metropolis," (*e*) or such one of them as may be authorized by one of Her Majesty's principal secretaries of state to act in the matter of this Act.

Surveyor on completion of survey to give certificate.

71. Upon the completion of his survey the surveyor employed shall certify to the said commissioners his opinion as to the state of any such structure as aforesaid.

Proceedings to be taken in respect of certificate.

72. If such certificate is to the effect that such structure is not in a dangerous state, no further proceedings shall be had in respect thereof, but if it is to the effect that the same is in a dangerous state, the commissioners shall cause the same to be shored up, or otherwise secured, and a proper hoard (*f*) or fence to be put up for the protec-

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(*c*) See note to preceding section.

(*d*) If an ancient erection, such as a house, is suffered to become insecure and dangerous to passers by, the remedy is by indictment for a nuisance; *R.* v. *Watts*, 1 Salk. 357, cited as an authority in the judgment of the court in *Fisher* v. *Prowse*, 2 B. & S. 779.

(*e*) The powers of the metropolitan commissioners of police are by the Metropolitan Building Act, 1869, transferred to the Metropolitan Board of Works.

(*f*) A custom by the mayor and common council of the city of London to put up hoards for the safety of passengers was held good; *Bradbee* v. *Christ's Hospital*, 4 M. & G. 714, 756, 764.

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Section 72.

tion of passengers, and shall cause notice in writing to be given to the owner or occupier of such structure requiring him forthwith to take down, secure, or repair the same, as the case requires,

On non-compliance with notice justice to summon owner, &c., and make order to comply with requisition.

73. If the owner or occupier to whom notice is given as last aforesaid fails to comply, as speedily as the nature of the case permits, with the requisition of such notice, the said commissioners may make complaint thereof before a justice of the peace ; and it shall be lawful for such justice to order the owner, or on his default the occupier, of any such structure to take down, repair, or otherwise secure, to the satisfaction of the surveyor who made such survey as aforesaid, or of such other surveyor as the said commissioners may appoint, such structure or such part thereof as appears to him to be in a dangerous state, within a time to be fixed by such justice ; and in case the same is not taken down, repaired, or otherwise secured within the time so limited, the said commissioners may with all convenient speed cause all or so much of such structure as is in a dangerous condition, to be taken down, repaired, or otherwise secured, in such manner as may be requisite ; and all expenses (*a*) incurred by the said commissioners in respect of any dangerous structure by virtue of the second part of this Act shall be paid by the owner (*b*) of such structure, but without prejudice to his right to recover the same from any lessee or other person liable to the expenses of repairs.

If owner cannot be found, commissioners may sell

74. If such owner cannot be found, or if, on demand, he refuses or neglects to pay the aforesaid expenses, the said commissioners, after giving three months notice of their intention to do so, by posting a

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(*a*) The metropolitan board were held entitled to recover against the owner of a dangerous structure, in addition to the surveyor's fees and sums charged for preparing notices and forms, but not for general office expenses ; *Metropolitan Board of Works* v. *Flight*, 43 L. J. M. C. 46 ; L. R. 9 Q. B. 58.

(*b*) Persons who were seised in fee of a building used as a chapel, which they had let on lease for a term of twenty years, were held not to be liable to payment of these expenses, and the lessee was decided to be the owner within the meaning of this enactment ; *Mourilyan* v. *Labalmondiere*, 30 L. J. M. C. 95. See *Ex parte Overseers of Saffron Hill*, 18 Jur. 1104, under section 42 of the former Building Act, 7 & 8 Vict. c. 84. See case where these expenses incurred by a tenant for life became a charge on the property ; *Ex parte Davis*, 4 Jur. (N.S.) 1029. See as to necessary averments in an order of a magistrate for payment of expenses incurred by commissioners under this section, viz., that the person had been summoned and the complaint adjudged to be true ; *Labalmondiere* v. *Prest*, 1 E. & E. 527 ; as to time of making complaint in respect of these expenses ; *Labalmondiere* v. *Addison*, 1 E. & E. 41. The ground landlord was held not an owner within sections 3 and 51, see *Hunt* v. *Harris*, 19 C. B. (N.S.) 13 ; *Caudwell* v. *Hanson*, L. R. 7 Q. B. 55, and *Cowen* v. *Phillips*, 33 Beav. 18.

A party having long lease of house at a small ground rent, and subletting it to different inmates at a rackrent, either on lease or from year to year, is owner within these sections ; *Hunt and others* v. *Harris*, 3 Cox Mag. Ca. 293. See judgment distinguishing *Evelyn* v. *Whichcord*, 27 L. J. M. C. 211 ; and *Mourilyan* v. *Labalmondiere*, 16 C. B. (N.S.) 298 ; also a tenant under an agreement for a lease ; *Cowen* v. *Phillips*, 33 Beav. 18. The court refused a mandamus to a magistrate to issue a warrant to enforce payment by the incumbent of a district church, All Saint's Church, Lambeth, of the expenses of repairing the tower certified to be dangerous, on the ground that he was not the owner within the Act, although the freehold was vested in him within the Church Building Acts ; *Metropolitan Board of Works* v. *Lee* L. R. 4 Q. B. 75.

printed or written notice in a conspicuous place on the structure in respect of which or of part of which they have incurred expense, or on the land whereon it stands, may sell (*c*) such structure, and they shall, after deducting from the proceeds of such sale the amount of all expenses (*d*) incurred by them, restore (*e*) the surplus (if any) to the owner.

structure, giving the surplus to owner, &c.

75. All payments hereby directed to be made by or to the commissioners shall in the cases of payments in respect of any structure situate within the city of London be made by or to the chamberlain of the city out of or to the consolidated rate made by the commissioners of sewers, and in the cases of payments in respect of any structure situate elsewhere within the limits of this Act be made by or to the receiver of metropolitan police, in the same manner in which payments are made by or to such chamberlain and receiver respectively in the ordinary course of their business; but no Commissioner or other officer shall be liable in respect of any loss that may be sustained by any person in consequence of the exercise by the said commissioners of the powers hereby given them, unless such loss happens through the wilful default of such commissioner or other officer.

Payments by or to the commissioners, how made.

76. In cases where any surplus is hereby made payable to any owner, if no demand for the same is made by any person entitled thereto within one year, then the same shall be paid into the Bank of England in the name and with the privity of the Accountant general of the Court of Chancery (*f*), to be placed to his account there to the credit of the owner (describing him so far as the commissioners can), subject to the control of the court, and to be paid out to the owner on his applying by petition, and proving his title thereto.

Surplus, how to be applied if no demand made for it.

77. There shall be paid to the district surveyor, or to such other surveyor as aforesaid, in respect of his services under the second part of this Act, such fees, not exceeding the amounts specified in the second part of the second schedule hereto, as may from time to time be directed by the said metropolitan board.

Fees to district surveyor.

(*c*) By section 41 of the former Building Act, 7 & 8 Vict. c. 84, the lord mayor and aldermen or overseers were empowered to sell and dispose of such of the materials as they should judge necessary. It is probable that the present enactment gives no greater power. Expenses incurred by a tenant for life in reinstating ruinous structures held a charge on the property; *Re Davis's Estate and Crystal Palace and West End Railway Company*, 3 De G. & J. 144. See as to non-liability of a company to compensation under a local Act, where party wall of a house taken was condemned as ruinous; *R.* v. *Hungerford Market Company*, 1 A. & Ell. 668.

(*d*) See *Bradbee* v. *Christ's Hospital*, 1 M. & G. 714. The Metropolis Management and Building Acts Amendment Act, 1878, section 19, empowers the purchaser, his agents and servants, to enter upon land whereon any structure bought is standing, for the purpose of taking down and removing the same; any person who refuses to admit the purchaser, &c., upon such land, or impedes him in removing the materials, shall be liable to a penalty not exceeding £10, and to a penalty of £5 for every day after the first day during which such refusal continues.

(*e*) The 41st section of a former Building Act made the surplus payable on demand; see *Simpson* v. *Routh*, 2 B. & C. 682.

(*f*) Now the paymaster general; 35 & 36 Vict. c. 44.

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Metropolitan board may appoint special fees for services not provided for.

78. If any special service is required to be performed by the district surveyor, or by such other surveyor as aforesaid, under the second part of this Act, for which no fee is specified in the said schedule, the said metropolitan board may order such fee to be paid for such service as they think fit.

Fees to be deemed part of expenses.

79. All fees paid to the district surveyor, or to such other surveyor as aforesaid, by virtue of the second part of this Act, shall be deemed to be expenses incurred by the said commissioners in the matter of the dangerous structure in respect of which such fees are paid, and shall be recoverable by them from the owner accordingly.

Justice of peace may cause inmates to be removed from dangerous structures.

80. In cases where a structure has been certified by a district surveyor, or such other surveyor as aforesaid, to be dangerous to its inmates, a justice of the peace may, if satisfied of the correctness of such certificate (*a*), upon the application of the said commissioners, by order under his hand direct any inmates of such structure to be removed therefrom by a constable or other peace officer, and if they have no other abode he may require them to be received into the workhouse established for the reception of the poor of the place in which such structure is situate.

Powers of commissioners to appoint officers.

81. Subject to the approval of one of Her Majesty's principal secretaries of state, the said commissioners may appoint such persons at such salaries, and make such regulations, as they think fit for carrying into execution the second part of this Act; and all expenses incurred by them not hereby otherwise provided for shall, in the case of expenses incurred by the said commissioners of police, be deemed to be expenses incurred by them in respect of the police force of which they are commissioners, and be payable accordingly (*b*); and all expenses incurred by the said commissioners of sewers shall be paid out of the said consolidated rate.

PART III. *Party Structures.*

PART III.

PARTY STRUCTURES (*c*).

PRELIMINARY.

Definition of building owner and adjoining owner.

82. In the construction of the following provisions relating to party structures, such one of the owners of the premises separated by or adjoining to any party structure as is desirous of executing any work in respect to such party structure shall be called the building owner, and the owner of the other premises shall be called the adjoining owner.

(*a*) The certificate of the surveyor of a corporation that a building was dangerous was held conclusive of the fact that it was dangerous; *Cheetham* v. *Corporation of Manchester*, 39 J. P. 343.

(*b*) Now the Metropolitan Board of Works, see note to section 70, *ante*.

(*c*) See definition of "party structure," section 3, *ante*. In a case under a Local Improvement Act, it was held that a wall might be a party wall to such height as it is common to two buildings, and cease to be a party wall for the rest of its height; *Weston* v. *Arnold*, L. R. 8 Ch. 1084.

Rights of building owner.

83. The building owner shall have the following rights in relation to party structures; that is to say,

(1.) A right to make good or repair any party structure that is defective or out of repair:

(2.) A right to pull down and rebuild any party structure that is so far defective or out of repair as to make it necessary or desirable to pull down the same (*d*):

(3.) A right to pull down any timber or other partition that divides any buildings, and is not conformable with the regulations of this Act, and to build instead a party wall conformable thereto:

(4.) In the case of buildings having rooms or stories the property of different owners intermixed, a right to pull down such of the said rooms or stories or any part thereof as are not built in conformity with this Act, and to rebuild the same in conformity with this Act:

(5.) In the case of buildings connected by arches or communications over public ways or over passages belonging to other persons, a right to pull down such of the said buildings, arches, or communications, or any part thereof, as are not built in conformity with this Act, and to rebuild the same in conformity with this Act:

(6.) A right to raise any party structure permitted by this Act to be raised (*e*) or any external wall built against such party structure, upon condition of making good all damage occasioned thereby to the adjoining premises or to the internal finishings and decorations thereof, and of carrying up to the requisite height all flues and chimney stacks belonging to the adjoining owner on or against such party structure or external wall:

(7.) (*f*) A right to pull down any party structure that is of insuffi-

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(*d*) A building owner pulling down a party wall under this section, is not bound to protect by hoarding, rooms of an adjoining owner; *Thompson* v. *Hill*, 39 L. J. C. P. 264. But he is responsible for unnecessary damage; *Bower* v. *Peate*, L. R. 1 Q. B. D. 321; *Dodd* v. *Holmes*, 1 A. & E. 493; *Crofts* v. *Haldane*, 8 B. & S. 194; *Warburton* v. *London and Blackwall Railway Company*, 1 Rail. C. 558; *Bradbee* v. *Christ's Hospital*, 4 M. & G. 714. Held under the Act of Geo. 3, that a general covenant to repair did not render the tenant liable to pay the expense of a party wall; *Sangster* v. *Birkhead*, 1 B. & S. 395, but he might bind himself by express covenant; *Barrett* v. *Duke of Bedford*, 8 T. R. 602, and see *Moore* v. *Clarke*, 5 Taunt. 89.

(*e*) The right hereby given of raising a party structure on condition of making good all damage, does not authorize the raising of a structure so as to obstruct ancient lights in the adjoining premises; *Crofts* v. *Haldane*, L. R. 2 Q. B. 194; 8 B. & S. 194. There being no right given by the Act, there is no question for the arbitrator under section 85, *ibid.* And see actions for obstructing light under former Building Act; *Titterton* v. *Conyer*, 5 Taunt. 465, and *Wells* v. *Ody*, 1 M. & W. 452. This section and the 85th do not apply to the case of the mere removal of a building from an adjoining building without disturbing the party structure, and no notice need be given; *Major* v. *Park Lane Company*, L. R. 2 Eq. 453.

(*f*) Although a co-owner of a party wall could not at common law sue the other co-owner for temporarily undermining the foundation of the wall

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cient strength for any building intended to be built, and to rebuild the same of sufficient strength for the above purpose, upon condition of making good all damage occasioned thereby to the adjoining premises, or to the internal finishings and decorations thereof :

(8.) A right to cut into any party structure upon condition of making good all damage occasioned to the adjoining premises by such operation :

(9.) A right to cut away any footing or any chimney breasts, jambs, or flues projecting from any party wall, in order to erect an external wall against such party wall, or for any other purpose, upon condition of making good all damage occasioned to the adjoining premises by such operation :

(10.) A right to cut away or take down such parts of any wall or building of an adjoining owner as may be necessary in consequence of such wall or building overhanging the ground of the building owner, in order to erect an upright wall against the same, on condition of making good any damage sustained by the wall or building by reason of such cutting away or taking down :

(11.) A right to perform any other necessary works incident to the connexion of party structure with the premises adjoining thereto :

But the above rights shall be subject to this qualification, that any building which has been erected previously to the time of this Act coming into operation shall be deemed to be conformable with the provisions of this Act if it is conformable with the provisions of an Act passed in the fourteenth year of His late Majesty King George the Third, chapter seventy-eight, or with the provisions of the said Act of the eighth year of Her present Majesty, chapter eighty-four.

Rights of adjoining owner.

84. Whenever the building owner proposes to exercise any of the foregoing rights with respect to party structures the adjoining owner may require the building owner to build on any such party structure certain chimney jambs, breasts, or flues, or certain piers or recesses, or any other like works for the convenience of such adjoining owner ; and it shall be the duty of the building owner to comply with such requisition in all cases where the execution of the required works will not be injurious to the building owner, or cause to him unnecessary inconvenience or unnecessary delay in the exercise of his right ; and any difference that arises between any building owner and adjoining owner in respect of the execution of such works as aforesaid shall be determined in manner in which differences between building owners and adjoining owners are hereinafter directed to be determined.

Rules as to exercise of rights by

85. The following rules shall be observed with respect to the exercise by building owners and adjoining owners of their respective rights :—

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and making a new foundation when the work involved no danger to the security of the wall, yet when within the area of the Metropolis Building Act, such a right, being a right in relation to a party structure within this section, cannot be carried out when a difference arises (unless both owners concur in the appointment of one surveyor) except by the award of two surveyors, and a third selected by them as provided by section 85, subsection 7 ; *Standard Bank of British South America*, v. *Stokes*, L. R. 9 Ch. D. 68.

(1.) No building owner shall, except with the consent of the adjoining owner, or in cases where any party structure is dangerous, in which cases the provisions hereby made as to dangerous structures shall apply, exercise any right hereby given in respect of any party structure, unless he has given at the least three months previous notice (*a*) to the adjoining owner by delivering the same to him personally, or by sending it by post in a registered letter addressed to such owner at his last known place of abode :

(2.) The notice so given shall be in writing or printed, and shall state the nature of the proposed work, and the time at which such work is proposed to be commenced :

(3.) No building owner shall exercise any right hereby given to him in such manner or at such time as to cause unnecessary inconvenience to the adjoining owner (*b*) :

(4.) Upon the receipt of such notice the adjoining owner may require the building owner to build or may himself build on any such party structure any works to the construction of which he is hereinbefore mentioned to be entitled :

(5.) Any requisition so made by an adjoining owner shall be in writing or printed, and shall be delivered personally to the building owner within one month after the date of the notice being given by him, or be sent by post in a registered letter addressed to him at his last known place of residence: It shall specify the works required by the adjoining owner for his convenience, and shall, if necessary, be accompanied with explanatory plans and drawings :

(6.) If either owner does not, within fourteen days after the delivery to him of any notice or requisition, express his consent thereto, he shall be considered as having dissented therefrom, and thereupon a difference shall be deemed to have arisen between the building owner and the adjoining owner :

(7.) (*c*) In all cases not hereby specially provided for where a difference arises between a building owner and adjoining owner in respect of any matter arising under this Act (*d*), unless both parties concur in the appointment of one surveyor they shall each appoint a surveyor, and the two surveyors so appointed shall select a third surveyor, and such one surveyor, or three surveyors, or any two of them,

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(*a*) This notice is not necessary where the person proposes to pull down a party wall between his own premises and premises also belonging to him, but let to a tenant from year to year or a shorter term ; *Wheeler* v. *Gray*, 27 L. J. C. P. 267 ; 28 L. J. C. P. 200. See also *Major* v. *Park Lane Company*, cited in note to section 83, sub-section 6, *ante*. Refer to *Sims* v. *Estate Company*, 14 W. R. 419, as to notice to rebuild a wall erroneously described as a party wall.

(*b*) A building owner pulling down a party wall is not bound to make a hoard to protect rooms of adjoining owner exposed by the removal ; *Thompson* v. *Hill*, 39 L. J. C. P. 264, L. R. 5 C. P. 564 ; and see *Bryer* v. *Willis*, 23 L. T. (N.S.) 365. See *R.* v. *Ponsford*, 12 L. J. Q. B. 313, under the former Act 14 Geo. 3, c. 78, s. 41.

(*c*) See *Standard Bank British South America* v. *Stokes*, note to section 83, sub-section 7, *supra*.

(*d*) But this does not apply where the act done is not authorized by the statute ; *Crofts* v. *Haldane*, L. R. 2 Q. B. 194. Where surveyors have been appointed to settle differences between a building owner and an adjoining owner as to a party wall, and the surveyors refused to appoint an umpire, the court appointed an umpire under the Common Law Procedure Act, 1854 ; *Ex parte McBryde*, L. R. 4 Ch. D. 200.

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shall settle any matter in dispute between such building and adjoining owner, with power by his or their award to determine the right to do, and the time and manner of doing any work, and generally any other matter arising out of or incidental to such difference; but any time so appointed for doing any work shall not commence until after the expiration of such period of three months, as is hereinbefore mentioned:

(8.) Any award given by such one surveyor, or by such three surveyors, or any two of them, shall be conclusive, and shall not be questioned in any court, with this exception, that either of the parties to the difference may appeal therefrom to the county court within fourteen days from the date of delivery of any such award as aforesaid, and such county court may, subject as hereinafter mentioned, rescind or modify the award so given in such manner as it thinks just:

(9.) If either party to the difference makes default in appointing a surveyor for ten days after notice has been given to him by the other party in manner aforesaid to make such appointment, the party giving the notice may make the appointment in the place of the party so making default:

(10.) The costs incurred in obtaining any such award as aforesaid shall be paid by such party as such one surveyor, or three surveyors, or any two of them, may determine:

(11.) If the appellant from any such award as aforesaid, on appearing before the county court, declares his unwillingness to have the matter decided by such court, and proves to the satisfaction of the judge of such court that in the event of the matter being decided against him he will be liable to pay a sum, exclusive of costs, exceeding fifty pounds, and gives security, to be approved by such judge, duly to prosecute his appeal and to abide the event thereof, all proceedings in the county court shall thereupon be stayed; and it shall be lawful for such appellant to bring an action in one of Her Majesty's superior courts of law at Westminster (*a*) against the other party to the difference; and the plaintiff in such action shall deliver to the defendants an issue or issues whereby the matters in difference between them may be tried; and the form of such issue or issues, in case of dispute, or in case of the nonappearance of the defendant, shall be settled by the court in which the action is brought; and such action shall be prosecuted and issue or issues tried (*b*) in the same manner and subject to the same incidents in and subject to which actions are prosecuted and issues tried in other cases within the jurisdiction of such court, or as near thereto as circumstances admit:

(12.) If the parties to any such action agree as to the facts, a special case may be stated for the opinion of any such superior court as aforesaid, and any case so stated may be brought before the court in like manner and subject to the same incidents in and subject to which other special cases are brought before such court, or as near thereto as circumstances admit; and any costs that may have been incurred in the county court by the parties to such action as is mentioned in this section shall be deemed to be costs incurred in such action, and be payable accordingly.

(*a*) Now the High Court of Justice, 36 & 37 Vict. c. 66.
(*b*) See Judicature Act, 1875, Order 26.

Power for building owner to make entry on premises to effect works.

86. Whenever any building owner has become entitled, in pursuance of this Act, to execute any work, it shall be lawful for him, his servants, agents, or workmen, at all usual times of working, to enter on any premises, for the purpose of executing and to execute such work, removing any furniture, or doing any other thing that may be necessary, and if such premises are closed he or they may, accompanied by a constable or other officer of the peace, break open any doors in order to such entry : and any owner or other person that hinders or obstructs any workman employed for any of the purposes aforesaid, or wilfully damages or injures the said work, shall incur for every such offence a penalty not exceeding ten pounds, to be recovered before a justice of the peace.

Penalty on persons obstructing.

Security to be given by building owner, if required by adjoining owner.

87. Any adjoining owner may, if he thinks fit, by notice in writing given by himself or his agent, require the building owner, before commencing any work which he may be authorized by this Act to execute, to give such security as may be agreed upon, or in case of difference may be settled by the judge of the county court, for the payment of all such costs and compensation in respect of such work as may be payable by such building owner.

Rules as to expenses in respect of party structure.

88. The following rules shall be observed as to expenses in respect of any party structure (that is to say) ;

As to expenses to be borne jointly by the building owner and adjoining owner :

(1.) If any party structure is defective or out of repair the expenses of making good or repairing the same shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of such structure :

(2.) If any party structure is pulled down and rebuilt by reason of its being so far defective or out of repair as to make it necessary or desirable to pull down the same, the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of such structure (*c*) :

(3.) If any timber or other partition dividing any building is pulled down, in exercise of the right hereinbefore vested in a building owner, and a party structure built instead thereof, the expense of building such party structure, and also of building any additional party structures that may be required by reason of such partition having been pulled down, shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of such party structure, and to the thickness required to the respective buildings parted thereby :

(4.) If any room or stories, or any part of rooms or stories, the property of different owners, and intermixed in any building, are pulled down in pursuance of the right hereinbefore vested in any building owner, and rebuilt in conformity with this Act, the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining

(*c*) Where plaintiff was owner of a boundary wall on his own land, against which he had built some closets, and defendant, his adjoining neighbour, had recently built a substantial structure: held, that so far as these buildings extended against both sides of the wall, it was a "party-wall" within this Act, and defendant was entitled, on giving the proper notice, to take down such part as might be necessary for the purpose of necessary re-building; *Knight* v. *Pursell*, L. R. 11 Ch. D. 412.

PART III.

Section 88.

owner in due proportion, regard being had to the use that each owner makes of such rooms or stories :

(5.) If any arches or communications, or any parts thereof, are pulled down in pursuance of the right hereinbefore vested in any building owner, and rebuilt in conformity with this Act, the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of such arches or communications :

As to expenses to be borne by building owner :

(6.) If any party structure or external wall built against the same is raised in pursuance of the power hereinbefore vested in any building owner, the expense of raising the same, and of making good all such damage, and of carrying up to the requisite height all such flues and chimnies as are hereinbefore required to be made good and carried up, shall be borne by the building owner :

(7.) If any party structure which is of proper materials and sound, or not so far defective or out of repair as to make it necessary or desirable to pull down the same, is pulled down and rebuilt by the building owner, the expense of pulling down and rebuilding the same, and of making good all such damage as is hereinbefore required to be made good, shall be borne by the building owner :

(8.) If any party structure is cut into by the building owner, the expense of cutting into the same, and of making good any damage hereinbefore required to be made good, shall be borne by such building owner :

(9.) If any footing, chimney breast, jambs, or floor is cut away in pursuance of the powers hereinbefore vested in any building owner, the expense of such cutting away, and of making good any damage hereinbefore required to be made good, shall be borne by the building owner.

Account of expenses of works to be delivered to adjoining owner within one month.

89. Within one month after the completion of any work which any building owner is by this Act authorized or required to execute, and the expense of which is in whole or in part to be borne by an adjoining owner, such building owner shall deliver to the adjoining owner an account in writing of the expense of the work (*a*), specifying any deduction to which such adjoining owner or other person may be entitled in respect of old materials, or in other respects ; and every such work as aforesaid shall be estimated and valued at fair average rates and prices, according to the nature of the work and the locality, and the market price of materials and labour at the time.

Adjoining owner may appeal against account.

90. At any time within one month after the delivery of such account, the adjoining owner, if dissatisfied therewith, may declare his dissatisfaction to the party delivering the same, by notice in writing given by himself or his agent, and specifying his objections thereto ; and upon such notice having been given a difference shall be deemed to have arisen between the parties, and such difference shall be determined in manner hereinbefore provided (*b*) for the determination of differences between building and adjoining owners.

(*a*) See action for expenses for rebuilding under the former Act, 14 Geo. 3, c. 78; *Reading* v. *Barnard*, M. & M. 71; see also *Philip* v. *Donati*, 2 Taunt. 62.

(*b*) See section 85, sub-section 7, *et seq.* as to settlement of differences by arbitration.

Building owner may recover, if no appeal made.

91. If within such period of one month as aforesaid the party receiving such account does not declare in manner aforesaid his dissatisfaction therewith, he shall be deemed to have accepted the same, and shall pay the same, on demand, to the party delivering the account, and if he fails to do so the amount so due may be recovered as a debt.

Penalty on delay of payment by adjoining owner.

92. Where the adjoining owner is liable to contribute to the expenses of building any party structure, until such contribution is paid the building owner at whose expense the same was built shall stand possessed of the sole property in such structure (*c*).

As to expenses incurred on requisition of adjoining owner.

93. Where any building owner has incurred any expenses on the requisition of an adjoining owner, the adjoining owner making such requisition shall be liable for all such expenses, and in default of payment the same may be recovered from him as a debt.

Penalty on building owner failing to execute required works (*d*).

94. Where any building owner is, by the third part of this Act, liable to make good any damage he may occasion to the property of the adjoining owner by any works authorized to be executed by him, or to do any other thing upon condition of doing which his right to execute such works is hereby limited to arise, and such building owner fails within a reasonable time to make good such damage or to do such thing, he shall incur a penalty, to be recovered before a justice of the peace, not exceeding twenty pounds for each day during which such failure continues.

Consent how given on behalf of persons under disability.

95. Where, in pursuance of this Act, any consent is required to be given, any notice to be served, or any other thing to be done by, on, or to any owner under disability, such consent may be given, such notice may be served, and such thing may be done by, on, or to the following persons, on behalf of such person under disability ; that is to say,

By, on, or to a husband, on behalf of his wife :

By, on, or to a trustee, on behalf of his cestuique trust :

By, on, or to a guardian or committee, on behalf of an infant, idiot, or lunatic.

Consent how given on behalf of persons not to be found.

96. Where any consent is required to be given or any other thing to be done by any owner in pursuance of this Act, if there is no owner capable of giving such consent or of doing such thing, and no person empowered by this Act to give such consent or to do such thing on behalf of such owner, or if any owner so capable, or any person so empowered, cannot be found, the judge of the county court shall have power to give such consent or do or cause to be done such thing on behalf of such owner, upon such terms and subject to such conditions as he may think fit, having regard alike to the nature and purpose of the subject matter in respect of which such consent is to be given, and to the fair claims of the parties on whose behalf such consent is to be given ; and such judge shall have power to dispense with the service of any notice which would otherwise be required to be served.

(*c*) The words which occurred in the former Building Act, 7 & 8 Vict. c. 84, s. 46, "and of the ground whereon it stands," are omitted from the present enactment.

(*d*) The operations in respect of which this liability arises are described in the 83rd section, *ante*.

PART IV.

Miscellaneous Provisions.

PART IV.

MISCELLANEOUS PROVISIONS.

Section 97.

Payment of expenses by owners.

97. Where it is hereby declared that expenses are to be borne by the owner of any premises (including in the term "owner" the adjoining and building owner respectively), the following rules shall be observed with respect to the payment of such expenses :

(1.) The owner immediately entitled in possession (*a*), to such premises, or the occupier thereof, shall in the first instance pay such expenses, with this limitation, that no occupier shall be liable to pay any sum exceeding in amount the rent due or that will thereafter accrue due from him in respect of such premises during the period of his occupancy :

(2.) If there are more owners than one, every owner shall be liable to contribute to such expenses in proportion to his interest :

(3.) If any difference arises as to the amount of contribution, such difference shall be decided by arbitration, to be conducted in manner directed by the Companies Clauses Consolidation Act, 1845 ; and for that purpose the clauses of the said Act with respect to the settlement of disputes by arbitration shall be incorporated with this Act (*b*) :

(4.) If some of the owners liable to contribution cannot be found, the deficiency so arising shall be divided amongst the parties that can be found :

(5.) Any occupier of premises who has paid any expenses under this Act may deduct the amount so paid from any rent payable by him to any owner of the same premises (*c*), and any owner of premises who has paid more than his due proportion of any expenses may deduct the amount so overpaid from any rent that may be payable by him to any other owner of the same premises :

(6.) If default is made by any owner or occupier in payment of any expenses hereby made payable by him in the first instance, or if default is made by any owner in payment of any other expenses or moneys due from him by way of contribution or otherwise in pursuance of this Act, then in

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(*a*) See *Ex parte Overseers of Saffron Hill*, 24 L. J. M. C. 56, under section 42, of the former Building Act, 7 & 8 Vict. c. 84. Under the old Building Act, 14 Geo. 3, c. 78, it was held that a general covenant to repair did not make the tenant liable to any part of the expense of a party wall ; *Sangster* v. *Birkhead*, 1 B. & P. 303 ; *Beardmore* v. *Fox*, 8 T. R. 214 ; except by express stipulation ; *Barrett* v. *Duke of Bedford*, 8 T. R. 602, and see *Moore* v. *Clark*, 5 Taunt. 90. As to liability of original lessor after sale of term by lessee, see *Southall* v. *Leadbetter*, 3 T. R. 458. And as to a lessee making improvements with resulting improved rent, see *Lambe* v. *Hemans*, 2 B. & Al. 467. And see *dicta* of Lord Kenyon, and Gibbs, C. J., in *Stuart* v. *Smith*, 2 Marsh. 435. And as to liability of executors, see *Thacker* v. *Wilson*, 3 A. & E. 142. See also *Horridge* v. *Wilson*, 11 A. & E. 645.

(*b*) The sections of the Companies Clauses Act relative to the settlement of disputes by arbitration commence with the 128th.

(*c*) But a tenant may, if he chooses, sue for the amount, in lieu of deducting it from his rent ; *Earle* v. *Maugham*, 14 C. B. (N.S.) 626.

addition to any other remedies hereby provided such expenses and moneys, if arising in respect of any matter within the provisions of the third part of this Act, may be recovered as a debt in due course of law, but if arising in respect of any other matter under this Act may be recovered in a summary manner.

Rules as to service of notices, summonses, and orders.

98. The following rules shall be observed with respect to the giving or service of any notice, summons, or order directed to be given or served under this Act in cases not hereinbefore provided for :

(1.) A notice, summons, or order may in all cases be served personally :

(2.) A notice, summons, or order may be served on any builder by leaving the same or sending it in a registered letter addressed to him at his place of address as stated by him to the district surveyor, or by putting up such notice, summons, or order on a conspicuous part of the building or premises to which the same relates :

(3.) A notice, summons, or order may be served on the owner or occupier of any premises by leaving the same with the occupier of such premises, or with some inmate of his abode, or if there is no occupier by putting up such notice, summons, or order on a conspicuous part of the building or premises to which the same relates ; and it shall not be necessary to name the owner or occupier of such premises ; nevertheless, when the owner of any such premises and his residence, or that of his agent, are known to the party by whom or on whose behalf any notice, summons, or order is intended to be served, it shall be the duty of such party to send every such notice, summons, or order by the post in a registered letter addressed to the residence or last known residence of such owner or of his agent :

(4.) A notice, summons, or order may be served on any district surveyor by leaving the same at his office.

As to things authorized to be done by a county court.

99. Whenever any thing is hereby authorized to be done by a county court it may be done as follows ; that is to say, if such thing arises in respect of any structure or other subject matter situate within the city of London or the liberties thereof, by the sheriffs court established by a local Act passed in the eleventh year of the reign of Her Majesty, chapter seventy-one, intituled "An Act for the more easy recovery of small debts and demands within the city of London or the liberties thereof," and if such thing arises in respect of any structure or other subject matter situate elsewhere, by the county court having jurisdiction within the district in which such structure or other subject matter is situate.

11 & 12 Vict. c. lxxi.

Manner of determining differences.

100. In cases where jurisdiction is hereby given to a county court, such court may from time to time make such order in respect of matters so brought before it as it may think fit, with power to settle the time and manner of executing any work, or of doing any other thing, and to put the parties to the case upon such terms as respects the execution of the work as it thinks fit : It shall also have power to award or refuse costs according to circumstances, and to settle the amount thereof.

Form of proceedings in county court.

101. Proceedings in any county court in respect of any matter arising under this Act shall be conducted in the same manner as pro-

Section 101. ceedings are conducted in any case within the ordinary jurisdiction of such court, or as near thereto as circumstances permit; and orders made by the judge of any such court may be enforced by execution, committal, or otherwise, in a similar manner to that in which the orders of such court are ordinarily enforced.

Appeal from decision of county court.

102. If either party in any case over which jurisdiction is hereby given to a county court feels aggrieved with the decision of such court in respect of any point of law or the admission or rejection of any evidence, he may appeal therefrom in the same manner and upon the same terms in and upon which he might have appealed from the decision of such court in any case within the ordinary jurisdiction of such court, or as near thereto as circumstances permit; but no such appeal shall be allowed unless the value of the matter in difference between the parties exceeds fifty pounds; and the opinion of the judge before whom the case is tried as to such value shall be conclusive.

Recovery of penalties.

103. All penalties under this Act, and all fees, moneys, costs, or expenses by this Act directed to be recovered in a summary manner, may be recovered in manner directed by an Act passed in the eleventh and twelfth years of the reign of Her present Majesty Queen Victoria, chapter forty-three, intituled "An act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary convictions and orders (*a*)," and whenever anything is hereby authorized or required to be done by or before a justice of the peace it may be done as follows; that is to say, if such thing arises in respect of any building or wall situate within the city of London, by or before one or more justice or justices of the peace for the said city or by any metropolitan police magistrate (*b*), and if such things arise in respect of any building or wall situate elsewhere within the limits of this Act, by or before any metropolitan police magistrate.

Application of penalties.

104. Any justice of the peace in any case over which jurisdiction is hereby given to him may make such orders as to the costs of any proceedings of which he has cognizance as he thinks just; he may also direct the whole or any part of any penalty imposed by him under this Act to be applied in or towards payment of the costs of the proceedings; and subject to such direction, all penalties shall be paid into the hands of the treasurer of the said metropolitan board, to be applied in such manner as the said board thinks fit (*c*).

Provisions as to limitation of time when

105. In cases where any building has been erected or work done without due notice being given to the district surveyor, the district surveyor may, at any time within one month after he has discovered

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(*a*) It was held that, pursuant to this Act, the complaint upon which an order for demolition is to be founded, must be made within six months after the completion of a building erected contrary to the provisions of a local Act; *Morant* v. *Taylor*, L. R. 1 Ex. D. (C.A.) 188; 45 L. J. M. C. 78.

(*b*) This apparently gives a metropolitan police magistrate jurisdiction over matters arising within the city of London.

(*c*) It was held, that before a conviction took place under the 17 & 18 Vict. c. 38 (suppressing gaming houses) at a metropolitan police court, the receiver of metropolitan police was by virtue of the Metropolitan Police Act,

Section 105.

that such building has been erected or work done, enter the premises for the purpose of seeing that the regulations of this Act have been complied with, and the time during which the district surveyor may take any proceeding, or do anything authorized or required by this Act to be done by him, in respect of such building or work, shall begin to run from the date of his discovering that such building has been erected or work done.

due notice has not been given.

Power to appeal to superior courts.

106. In every case, except in respect of fees of a district surveyor, in which jurisdiction is herein-before given to a justice of the peace, if either party to any such case is dissatisfied with the determination of the justice so convicting (*d*), in respect of any point of law, or of the admission or rejection of any evidence, such party may, upon giving notice within seven days (*e*) to the other party of his intention to appeal, appeal therefrom to any of the superior courts of common law at Westminster (*f*), subject to this restriction, that no such appeal shall be made by any district surveyor except with the consent of the justice before whom the case is tried, and that no such appeal shall be made by any other party to the case except upon giving such security for costs, and, if the case requires it, in addition thereto, such undertaking in respect of desisting in the mean time from any works complained of, or in respect of any other matter or thing arising in the case as the justice thinks fit.

Form of appeal.

107. Any appeal so made shall be in the form of a special case, to be agreed on by both parties, or, if the parties cannot agree, to be settled by the justice from whose decision the appeal is made; and such case shall be transmitted by the appellant to the rule department of the master's office in the court in which the appeal

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2 & 3 Vict. c. 71, s. 47, entitled to one half of the penalty directed by the first-named Act to be applied in aid of the poor rates; *Wray* v. *Ellis*, 28 L. J. M. C. 45. See also *Metropolitan Police Receiver* v. *Bell*, L. R. 7 Q. B. 433.

The Metropolis Local Management Act, 1862, s. 105, repeals the enactment in the first management Act, and provides that notwithstanding the Metropolitan Police Act, the penalties recovered by the metropolitan board and vestries and district boards, shall, to the extent defined, be paid to their treasurer. This applies to penalties under the Metropolis Management Acts, and not in terms to this, the Metropolitan Building Act. Though the decision in *Wray* v. *Ellis* would probably override the preceding enactment, if taken alone, it might not be unworthy of attention to consider the effect of the present provision as to the payment of penalties to the metropolitan board, with unfettered discretion as to their application, connecting it with the previous section of this Act, and the sections of the Metropolis Local Management Act, relative to the powers, duties and expenses of that board.

(*d*) See appeal from decision of divisional court of appeal, holding that "convicting" means "acting"; *Scott* v. *Legg*, W. N. 1877, p. 110. This section does not preclude a magistrate from stating a case under 20 & 21 Vict. c. 45; *Power* v. *Wigmore*, L. R. 7 C. P. 386. And see *Steele* v. *Brannan*, 41 L. J. M. C. 85.

(*e*) It was held under the Public Health Act, 1875, that the time for appeal ran from the date of the decision, and not from the service of the order; *R.* v. *Barnet Sanitary Authority*, L. R. 1 Q. B. D. 558.

(*f*) Now the high court of justice.

Section 107. is to be brought, and be heard in manner provided by the practice of such court.

Notice of action.

108. No writ or process shall be sued out against any district surveyor or other person (*a*) for anything done or intended to be done under the provisions of this Act until the expiration of one month next after notice in writing has been delivered to him or left at his office or usual place of abode, stating the cause of action, and the name and place of abode of the intended plaintiff, and of his attorney or agent in the cause; and upon the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in such last-mentioned notice; and unless such notice is proved the jury shall find for the defendant; and every such action shall be brought or commenced within six months next after the accrual of the cause of action, and not afterwards, and shall be laid and tried in the county or place where the cause of action occurred, and not elsewhere; and the defendant shall be at liberty to plead the general issue, and give this Act and all special matter in evidence thereunder (*b*).

PART V.

Repeal of former Acts, and temporary Provisions.

PART V.

REPEAL OF FORMER ACTS, AND TEMPORARY PROVISIONS.

REPEAL.

Repeal of 8 & 9 Vict. c. 84, except ss. 54 to 63, and 9 & 10 Vict. c. 5.

109. (*c*) From and after the commencement of this Act, the following Acts, that is to say, an Act passed in the eighth year of the reign of Her present Majesty, chapter eighty-four, and intituled An Act for regulating the construction and the use of buildings in the metropolis and its neighbourhood, with the exception of the sections relating to dangerous and noxious businesses, and numbered respectively fifty-four (*d*), fifty-five, fifty-six fifty-seven, fifty-eight, fifty-nine, sixty, sixty-one, sixty-two, and sixty-three, and

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(*a*) As to who is a "person," see *Wheeler* v. *Gray*, 4 C. B. (N.S.) 584; 6 C. B. (N.S.) 606.

(*b*) See case of *Richards* v. *Easto*, 15 M. & W. 244, under the former Building Act, 7 & 8 Vict. c. 84, where it was held that the special matter of defence relied on, could not be given in evidence under the general issue. This right is expressly conferred by this enactment.

(*c*) Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66) (Sched.) repeals this section.

(*d*) The 54th section prohibited the erection of any buildings within a certain distance from any building in use for any of the following businesses; viz., manufacture of gunpowder, or of detonating powder, or of matches ignitable by friction or otherwise, or other substance liable to sudden explosion, inflammation, or ignition, or of vitriol, or of turpentine, or of naphtha, or of varnish, or of fireworks, or of painted table covers, and any other manufacture dangerous on account of the liability of the materials or substances employed therein to cause sudden fire or explosion; and it prohibited persons from establishing or newly carrying on any such business within a certain distance from the public way, &c., and imposed penalties.

an Act passed in the ninth year of the reign of Her present Majesty, chapter five, and intituled "An Act to amend an Act for regulating the Construction and Use of Buildings in the Metropolis and its Neighbourhood," are throughout the limits of this Act and elsewhere hereby repealed, subject to the following provisions; that is to say,

1. That such repeal shall not affect any proceedings authorized to be taken by the said Acts or either of them in respect of any Act, omission, penalty, matter, or thing, and pending before the official referees or any other tribunal at the time of the commencement of this Act:
2. That in cases where any act, omission, or thing has occurred previously to the time of the commencement of this Act, in respect of which, if this Act had not passed, proceedings might have been taken under the said Acts or either of them, then proceedings in respect of such act, omission, or thing may be had under this Act in manner following; that is to say, if the matter in question is anything relating to the rights of building and adjoining owners in respect of party structures, proceedings may be had in the county court, but if the matter in question relates to the recovery of any penalty or to any other thing, proceedings may be had before any justice of the peace:
3. (*e*) That so much of the Act of the fourteenth year of King George the Third, chapter seventy-eight, as was excepted from the

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The 55th prohibited the erection of any building of the dwelling-house class within a prescribed distance from any building used for any of the following businesses; viz., bloodboiler, boneboiler, fellmonger, soap boiler, slaughterer of cattle, sheep, or horses, tallow-melter, tripeboiler, and any other like business offensive or noxious, and the establishment or newly carrying on of any such business within a certain distance from any public way or any building of the dwelling-house class, and imposes penalties. The 56th prescribed the mode of imposing penalties, and provided for a mitigation of penalties or a suspension of orders in certain cases. The 57th related to appeals against convictions; the 58th authorized a trial by jury at quarter sessions, and prescribed the course of proceeding; the 60th preserved common law and statutory remedies; the 61st provided for the removal of any offensive, noxious, or dangerous business, after memorial to the Queen in council and on payment of compensation; the 62nd related to the mode of raising funds for payment of compensation; and the 63rd exempted from the operation of these provisions public gasworks and premises used for the distillation, &c., of spirits, under the survey of commissioners of excise.

(*e*) The 74th section directed the churchwardens, &c., to fix stop blocks, at the charge of the parish, upon the mains and pipes belonging to waterworks, with plugs, and empowered them to fix marks or writing on the front of houses over against or near the places where stopblocks, plugs, &c., lie, and provided for the keeping of instruments or keys for opening stockblocks, &c. The 75th directed parishes to keep engines, leather pipes, ladders, &c., and imposed penalties on churchwardens, &c., making default. The 76th directed payment of certain rewards to the turncock of waterworks whose water should first come into a main or pipe at a fire, and to engine keepers bringing parish engines to help to extinguish a fire, which rewards might, in case of default, be levied by distress on churchwardens, &c. The 77th declared that no reward should be payable without approbation of an alderman, common councillor, or justice, &c. The 78th provided for the reimbursement of churchwardens, &c., by the inhabitants or occupiers of rooms, and the tenants, &c., of houses, and it empowered the mayor, justices, &c., to award sums, and provided for the recovery of the sum awarded. The 80th related

PART V.

Section 109.

operation of the said Act of the eighth year of Her present Majesty, chapter eighty-four, (that is to say,) the Sections numbered respectively seventy-four, seventy-five, seventy-six, seventy-seven, seventy-eight, eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, and eighty-six, shall continue in full force.

As to contracts made previously to passing of Act.

110. (*a*) Any contract made previously to the passing of this Act for the erection of a new building shall be carried into effect in the same manner as if this Act had been passed at the time of the making thereof, and the necessary deviations from the terms of such contract may be made accordingly; and if any dispute arises in respect of any loss sustained by any party to such contract by reason of such necessary deviation, such dispute shall be determined by the county court; and whenever any costs or expenses have been paid by any owner in pursuance of this Act, then as to any structure held under any lease or agreement made previously to the commencement of this Act it shall be lawful for such owner to recover the same from the persons hitherto liable by law, or by such existing lease or contract, to maintain or repair the structure in respect of which such costs and expenses have been incurred (*b*).

Liabilities under contract between landlord and tenant not to be affected.

111. Nothing herein contained shall vary or affect the rights or liabilities as between landlord and tenant under any contract between them.

As to iron buildings constructed before this Act comes into operation.

112. In cases where any iron building has been constructed or is in the progress of construction previously to the time at which this Act comes into operation, and doubts are entertained whether such building is permitted by law, any person interested in such building may make an application to the commissioners of works and buildings, to signify their approval of such building; and the commissioners of works and buildings, upon being satisfied of the stability of such building, may approve of the same, and upon such approval being given such building shall be deemed to have been constructed in manner permitted by law, and this section shall come into operation immediately after the passing of this Act.

Compensation to official referees and registrar.

113. The official referees and registrar of metropolitan buildings may, within six months from the time at which this Act comes into operation, apply to the commissioners of Her Majesty's treasury for

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to the number of engines, &c., for large parishes. The 81st authorized the charges of providing and maintaining engines, &c., to be paid out of poor-rates. The 82nd exempted watermen retained by insurance offices from liability to be impressed. The 83rd authorized governors or directors of insurance offices, in the cases specified, to cause insurance moneys to be laid out in rebuilding houses, &c., burnt down, demolished, or damaged by fire. The 84th subjected servants by carelessness firing a house to a penalty of £100; in default of payment, to imprisonment for eighteen months. The 85th prescribed duties of constables and beadles in case of fire, and the 86th prohibits the bringing of any action against any person in whose house, &c., any fire should accidently begin, and exempted every such person from liability to make recompense for any damages suffered thereby.

(*a*) Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66) repeals this section as far as the words "county court; and."

(*b*) See *Viscount Canterbury* v. *Attorney General*; 1 Phillimore's Ca. 306.

compensation in respect of the loss they have sustained by reason of the abolition of their offices ; and the commissioners shall take any such application into consideration, and award such compensation, either by way of a gross sum or annual payment, as they think just, having regard to the nature of the office, the time during which the applicant has held the same, and generally to the special circumstances of each case ; and any compensation so given shall be paid out of moneys to be provided by parliament ; and such compensation, when made by annual payment, shall be subject to this proviso, that if any such official referee or registrar is at any time thereafter appointed to any public office in respect of which he receives a salary, the payment of the compensation awarded to him under this Act shall be suspended so long as he receives such salary, if the amount thereof is greater than such compensation, or if not shall be diminished by the amount of such salary.

Compensation to clerks in office of metropolitan buildings.

114. Any person, except the said official referees and registrar, who at the time when this Act comes into operation is employed in the office of metropolitan buildings may within six months from such time apply to the metropolitan board of works for employment, and such board shall thereupon take such application into consideration, and they shall either employ the applicant at a salary not less in amount than that which he enjoyed when in the said office of metropolitan buildings, or at a less salary awarding to him compensation in respect of such diminution of salary, or they shall award to him such compensation, if any, as they, or in the event of the applicant feeling aggrieved with their decision, as the commissioners of the treasury think just, having regard to the nature of the office, the time during which it has been held by the applicant, and generally to the special circumstances of the case ; and any expenses incurred by the said board in carrying into effect this section shall be deemed to be expenses incurred in the execution of the said Act for the better local management of the metropolis, and be raised accordingly ; nevertheless, if any such clerk or servant as aforesaid at any time thereafter is appointed to any public office, or to any office under the said metropolitan board, in respect of which he receives a salary, the payment of the compensation awarded to him under this Act shall be suspended so long as he receives such salary, if the amount thereof is greater than the amount of such compensation, or if not shall be diminished by the amount of such salary ; but, notwithstanding anything herein contained, the metropolitan board may, in the event of their employing any person mentioned in this section, dismiss him, with the consent of the treasury.

FIRST SCHEDULE (a).

PRELIMINARY.

Structure of buildings.

1. Every building shall be enclosed with walls constructed of brick, stone, or other hard and incombustible substances, and the foundations shall rest on the solid ground, or upon concrete or upon other solid substructure.

Construction of walls of brick, stone, &c.

2. Every wall constructed of brick, stone, or other similar substances shall be properly bonded and solidly put together with mortar or cement, and no part of such wall shall overhang any part underneath it, and all return walls shall be properly bonded together.

Extra thickness of certain stone walls.

3. The thickness of every stone wall in which the beds of the masonry are not laid horizontally shall be one third greater than the thickness prescribed for stone walls in the rules hereinafter contained.

Thickness of walls.

4. The thickness of every wall as hereinafter determined shall be the minimum thickness.

Height of story.

5. The height of every topmost story shall be measured from the level of its floor up to the under side of the tie of the roof, or up to half the vertical height of the rafters, when the roof has no tie; and the height of every other story shall be the clear height of such story exclusive of the thickness of the floor.

Height of external and party walls.

6. The height of every external and party wall shall be measured from the base of the wall to the level of the top of the topmost story.

Length of walls.

7. Walls are deemed to be divided into distinct lengths by return walls, and the length of every wall is measured from the centre of one return wall to the centre of another; provided that such return walls are external, party, or cross walls of the thickness hereinafter required, and bonded into the walls so deemed to be divided.

Footings of walls.

8. The projection of the bottom of the footing of every wall, on each side of the wall, shall be at least equal to one half of the thickness of the wall at its base; and the diminution of the footing of every wall shall be formed in regular offsets, and the height from the bottom of such footing to the base of the wall shall be at the least equal to one half of the thickness of the wall at its base.

(a) See *R.* v. *Carruthers*, 33 L. J. M. C. 107, cited in note (*b*) to section 3, *ante*.

PART I.

Rules for the Walls of Dwelling Houses.

Thickness of walls of dwelling houses.

1. The external and party walls of dwelling houses shall be made throughout the different stories of the thickness shown in the following table, arranged according to the heights and lengths of the walls, and calculated for walls up to one hundred feet in height, and supposed to be built of bricks not less than eight and a half inches and not more than nine and a half inches in length, the heights of the stories being subject to the condition hereinafter given.

2. Table.

I.	II.	III.	IV.
Height up to 100 feet.	Length up to 45 feet. Two stories, 21½ inches. Three stories, 17½ inches. Remainder, 13 inches.	Length up to 80 feet. Two stories, 26 inches. Two stories, 21½ inches. Two stories, 17½ inches. Remainder, 13 inches.	Length unlimited. One story, 30 inches. Two stories, 26 inches. Two stories, 21½ inches. Two stories, 17½ inches. Remainder, 13 inches.
Height up to 90 feet	Length up to 45 feet. Two stories, 21½ inches. Two stories, 17½ inches. Remainder, 13 inches.	Length up to 70 feet. One story, 26 inches. Two stories, 21½ inches. Two stories, 17½ inches. Remainder, 13 inches.	Length unlimited. One story, 30 inches. Two stories, 26 inches. One story, 21½ inches. Two stories, 17½ inches. Remainder, 13 inches.
Height up to 80 feet.	Length up to 40 feet. One story, 21½ inches. Two stories, 17½ inches. Remainder, 13 inches.	Length up to 60 feet. Two stories, 21½ inches. Two stories, 17½ inches. Remainder, 13 inches.	Length unlimited. One story, 26 inches. Two stories, 21½ inches. Two stories, 17½ inches. Remainder, 13 inches.
Height up to 70 feet.	Length up to 40 feet. Two stories, 17½ inches. Remainder, 13 inches.	Length up to 55 feet. One story, 21½ inches. Two stories, 17½ inches. Remainder, 13 inches.	Length unlimited. One story, 26 inches. Two stories, 21½ inches. One story, 17½ inches. Remainder, 13 inches.
Height up to 60 feet.	Length up to 30 feet. One story, 17½ inches. Remainder, 13 inches.	Length up to 50 feet. Two stories, 17½ inches. Remainder, 13 inches.	Length unlimited. One story, 21½ inches. Two stories, 17½ inches. Remainder, 13 inches.
Height up to 50 feet.	Length up to 30 feet. Wall below the topmost story, 13 inches. Topmost story, 8½ inches. Remainder, 8½ inches.	Length up to 45 feet. One story, 17½ inches. Rest of wall below topmost story, 13 inches. Topmost story, 8½ inches. Remainder, 8½ inches.	Length unlimited. One story, 21½ inches. One story, 17½ inches. Remainder, 13 inches.

I.	II.	III.	IV.
Height up to 40 feet.	Length up to 35 feet.	Length unlimited.	
	Wall below two topmost stories, 13 inches. Two topmost stories, 8½ inches. Remainder, 8½ inches.	One story, 17½ inches. Rest of wall below topmost story, 13 inches. Topmost story, 8½ inches. Remainder, 8½ inches.	
Height up to 30 feet.	Length up to 35 feet.	Length unlimited.	
	Wall below two topmost stories, 13 inches. Two topmost stories, 8½ inches. Remainder, 8½ inches.	Wall below topmost story, 13 inches. Topmost story, 8½ inches. Remainder, 8½ inches.	
Height up to 25 feet.	Length up to 30 feet.	Length unlimited.	
	From base to top of wall, 8½ inches.	Wall below topmost story, 13 inches. Topmost story, 8½ inches. Remainder, 8½ inches.	

Explanation of tables.

3. In using the above table the height of the wall is to be reckoned on the first vertical column on the left hand of the table, and the length of the wall on the corresponding horizontal column. The thickness of the wall in each story is given in inches, and begins with the wall from the base upwards.

Qualification in case of certain walls.

4. If any external or party wall, measured from centre to centre, is not more than twenty-five feet distant from any other external or party wall to which it is tied by the beams of any floor or floors, other than the ground floor, or the floor of any story formed in the roof, the length of such wall is not to be taken into consideration, and the thickness of the wall will be found in the second vertical column in the above table.

Condition in respect of stories exceeding a certain height.

5. If any story exceeds in height sixteen times the thickness prescribed for the walls of such story in the above table, the thickness of each external and party wall throughout such story shall be increased to one sixteenth part of the height of the story; but any such additional thickness may be confined to piers properly distributed, of which the collective widths amount to one fourth part of the length of the wall.

Restriction in cases of certain stories.

6. No story enclosed with walls less than thirteen inches in thickness shall be more than ten feet in height.

Thickness of walls built of materials other than such bricks as aforesaid.

7. The thickness of any wall of a dwelling house, if built of materials other than such bricks as aforesaid, shall be deemed to be sufficient if made of the thickness required by the above tables, or of such less thickness as may be approved by the metropolitan board, with this exception, that in the case of walls built of stone in which the beds of the masonry are not laid horizontally no diminution shall be allowed in the thickness required by the foregoing rules for such last-mentioned walls.

Rule as to buildings not being public buildings or buildings of the warehouse class.

8. All buildings, excepting public buildings, and such buildings as are hereinafter defined to be buildings of the warehouse class, shall, as respects the thickness of their walls, be subject to the rules given for dwelling houses.

PART II.

Rules for the Walls of Buildings of the Warehouse Class.

1. The warehouse class shall comprise all warehouses, manufactories, breweries, and distilleries. Definition of warehouse class.

2. The external and party walls of buildings of the warehouse class shall at the base be made of the thickness shown in the following table, calculated for walls up to one hundred feet in height, and supposed to be built of bricks not less than eight and a half inches and not more than nine and a half inches in length. Thickness at base.

3. Table.

I.	II.	III.	IV.
Height up to 100 feet.	Length up to 55 feet. Base, 26 inches.	Length up to 70 feet. Base, 30 inches.	Length unlimited. Base, 34 inches.
Height up to 90 feet.	Length up to 60 feet. Base, 26 inches.	Length up to 70 feet. Base, 30 inches.	Length unlimited. Base, 34 inches.
Height up to 80 feet.	Length up to 45 feet. Base, 21½ inches.	Length up to 60 feet. Base, 26 inches.	Length unlimited. Base, 30 inches.
Height up to 70 feet.	Length up to 30 feet. Base, 17½ inches.	Length up to 45 feet. Base, 21½ inches.	Length unlimited. Base, 26 inches.
Height up to 60 feet.	Length up to 35 feet. Base, 17½ inches.	Length up to 50 feet. Base, 21½ inches.	Length unlimited. Base, 26 inches.
Height up to 50 feet.	Length up to 40 feet. Base, 17½ inches.	Length up to 70 feet. Base, 21½ inches.	Length unlimited. Base, 26 inches.
Height up to 40 feet.	Length up to 30 feet. Base, 13 inches.	Length up to 60 feet. Base, 17½ inches.	Length unlimited. Base, 21½ inches.
Height up to 30 feet.	Length up to 45 feet. Base, 13 inches.	Length unlimited. Base, 17½ inches.	
Height up to 25 feet.	Length unlimited. Base, 13 inches.		

4. The above table is to be used in the same manner as the table previously given for the walls of dwelling houses, and is subject to the same qualifications and conditions respecting walls not more than twenty-five feet distant from each other. Explanation of table.

PART II.

Sched. 1.

Thickness at top of walls and through intermediate space.

5. The thickness of the walls of buildings of the warehouse class at the top, and for sixteen feet below the top, shall be thirteen inches; and the intermediate parts of the wall between the base and such sixteen feet below the top shall be built solid throughout the space between straight lines drawn on each side of the wall, and joining the thickness at the base to the thickness at sixteen feet below the top, as above determined; nevertheless in walls not exceeding thirty feet in height the walls of the topmost story may be eight inches and a half thick.

Condition in respect of stories exceeding a certain height.

6. If in any story of a building of the warehouse class the thickness of the wall, as determined by the rules hereinbefore given, is less than one fourteenth part of the height of such story, the thickness of the wall shall be increased to one fourteenth part of the height of the story; but any such additional thickness may be confined to piers properly distributed, of which the collective widths amount to one fourth part of the length of the wall.

Thickness of walls built of materials other than such bricks as aforesaid.

7. The thickness of any wall of a building of the warehouse class, if built of materials other than such bricks as aforesaid, shall be deemed to be sufficient if made of the thickness required by the above tables, or of such less thickness as may be approved by the metropolitan board, with this exception, that in the case of walls built of stone in which the beds of the masonry are not laid horizontally no diminution shall be allowed in the thickness required by the foregoing rules for such last-mentioned walls.

MISCELLANEOUS.

Cross walls.

1. The thickness of a cross wall shall be two thirds of the thickness hereinbefore required for an external or party wall of the same dimensions, and belonging to the same class of buildings, but never less than eight and a half inches, and no wall subdividing any building shall be deemed to be a cross wall unless it is carried up to two thirds of the height of the external or party walls, and unless the recesses and openings therein do not exceed one half of the vertical surface of the wall in each story.

Extra thickness of certain stone walls.

2. The thickness of every stone wall in which the beds of the masonry are not laid horizontally shall be one third greater than the thickness prescribed in the rules aforesaid.

3. Buildings to which the preceding rules are inapplicable require the special sanction of the metropolitan board of works.

SECOND SCHEDULE.

FEES PAYABLE TO DISTRICT SURVEYORS.

PART I.

Fees for New Buildings.

	s.	d.
For every building not exceeding four hundred square feet in area, and not more than two stories in height - -	30	0
For every additional story - - - - - - - -	5	0
For every additional square of 100 feet or fraction of such square - - - - - - - - - -	2	6
But no fee shall exceed ten pounds.		
And for every building not exceeding four hundred square feet in area, and of one story only in height, the fees shall be - - - - - - - - - - -	15	0

Fees for Additions or Alterations.

For every addition or alteration made to any building after the roof thereof has been covered in, the fee shall be half of the fee charged in the case of a new building.		
For inspecting the arches or stone floors over or under public ways - - - - - - - - - - -	10	0
For inspecting the formation of openings in party walls -	10	0

PART II.

For inspecting dangerous structures, by directions of the commissioners of police or sewers - - - - -	20	0

N.B.—In this schedule "area" shall include the area of any attached building.

AN ACT

TO ALTER AND AMEND "THE METROPOLITAN BUILDING ACT, 1855."

23 & 24 VICT. CAP. 52.

23RD JULY, 1860.

WHEREAS certain rules of "The Metropolitan Building Act, 1855," have been found to operate prejudicially by limiting the contents of buildings to be erected in workshops for the manufacture of the machinery and the boilers of steam vessels, and as the increased and increasing size of such machinery and boilers for the royal and commercial marine of this country requires larger areas for their manufacture than are allowed by such rule, it is expedient to amend the said Act; Be it therefore enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same as follows:

Short title.

1. This Act may cited for all purposes as "The Metropolitan Building Act (Amendment) 1860."

Rules as to cubical dimensions of the metropolitan building Act, 1855, not to apply to buildings to be used for the manufacture of machinery and boilers of steam vessels, provided that such buildings shall consist of one floor only, &c. (a).

2. The rule of "The Metropolitan Building Act, 1855," limiting the cubical dimensions or contents of buildings used either wholly or in part for the purposes of trade or manufacture, shall not after the passing of this Act apply to any building to be used wholly for the manufacture of the machinery and boilers of steam vessels beyond the distance of three miles from Saint Paul's Cathedral: Provided always, that every such building shall consist of one floor only, and shall be constructed of brick, stone, iron, or other incombustible material; and it shall not be lawful for the owners, lessees, or occupiers thereof, or for any persons interested therein, to use such building for any other purpose than the manufacture of the machinery and the boilers of steam vessels until all the rules and provisions of the said Act, as to party walls and other matters which are applicable to buildings of a similar character, shall have been duly complied with: Provided also, that every such building, if of greater dimensions than two hundred and sixteen thousand cubic feet, shall be subject to the approval of the metropolitan board of works, in the same manner as iron buildings or buildings to which the rules of the said Act are inapplicable as set forth in the fifty-sixth section of such Act.

(a) See 18 & 19 Vict. c. 122, s. 27, rule 4.

AN ACT

TO AMEND THE METROPOLITAN BUILDING ACT, 1855.

24 & 25 VICT. CAP. 87.

6TH AUGUST, 1861.

WHEREAS by "The Exhibition of 1851, Roads and Lands Act," all buildings erected or to be erected by the "Commissioners of the Exhibition of 1851," were exempted from the operation of the Acts then in force for regulating the construction of buildings in the metropolis and its neighbourhood: And whereas the said last-mentioned Acts were repealed by "The Metropolitan Building Act, 1855," and new regulations for the construction of buildings substituted; but doubts are entertained whether the exemption provided by the said first-mentioned Act is continued by the said Building Act of 1855: And whereas it is expedient that such doubts should be removed: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows: 17 & 18 Vict c. 107.

1. The first part of the Metropolitan Building Act, 1855, containing the regulations relating to the construction of buildings in the metropolis, shall not, nor shall any provision therein contained, apply to any buildings erected or to be erected by or with the sanction of the commissioners for the exhibition of 1851 on any lands belonging to them, and purchased in pursuance of any power vested in them by charter or act of parliament, with the exception of such streets or blocks of buildings as may be erected by them, or with their sanction, as private dwelling-houses. Provisions of 18 & 19 Vict. c. 122, not to apply to buildings of commissioners for the exhibition of 1851 (*a*).

2. This Act may be cited for all purposes as "The Metropolitan Building Amendment Act, 1861." Short title.

(*a*) See exemption from operation of part 1 of that Act, section 6, *ante*.

AN ACT

TO AMEND THE METROPOLITAN BUILDING ACT, 1855.

32 & 33 VICT. CAP. 82.

9TH. AUGUST, 1869.

18 & 19 Vict. c. 22.

WHEREAS by "The Metropolitan Building Act, 1855," various powers for the regulation and supervision of buildings in the metropolis are given to the metropolitan board of works:

And whereas by Part Two of the same Act certain powers over dangerous structures are given to the commissioners of police of the metropolis, and it is expedient to transfer those powers to the metropolitan board of works:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as "The Metropolitan Building Act, 1869."

Act to be construed with 18 & 19 Vict. c. 122.

2. This Act shall be construed as one with "The Metropolitan Building Act, 1855," and the Acts amending the same.

Commencement of Act.

3. This Act shall come into operation on the first day of October, one thousand eight hundred and sixty-nine, which date is in this Act referred to as the commencement of this Act.

Transfer of powers over dangerous structures to the metropolitan board of works.

4. The powers given by Part two of "The Metropolitan Building Act, 1855," to the commissioners of police of the metropolis with respect to the survey of and securing and notice respecting structures in a dangerous state, and to taking down, securing, or repairing such structures, and to the recovery of the expenses thereof, and to the appointment of persons and making of regulations for carrying into execution part two of the said Act relating to such structures, shall, on the commencement of this Act, be transferred to and vest in, and may thereafter be exercised by, the metropolitan board of works; and the expression "the commissioners" throughout the said part (so far as regards structures situate within the limits of the said Act, and not within the city of London) shall mean the metropolitan board of works.

Expenses of metropolitan

5. All payments directed by part two of "The Metropolitan Building Act, 1855," as amended by this Act, to be made by the metro-

Section 5.

politan board of works in respect of any structure situate within the limits of that Act, and not within the city of London, and all expenses incurred by the said board in carrying into execution part two of the said Act, shall be deemed to be part of their expenses in carrying into execution the said Act, and shall be raised and paid accordingly.

board of works.

All payments directed by part two of the said Act as amended by this Act to be made to the metropolitan board of works, shall be made in the same manner in which payments are made to the board in the ordinary course of their business.

6. So much of the Metropolitan Building Act 1855, as is set out in the third column of the schedule to this Act is hereby repealed.

Part of 18 & 19 Vict. c. 122, repealed.

SCHEDULE.

Date.	Title.	Part Repealed.
18 & 19 Vict. c. 122.	An Act to amend the laws relating to the construction of buildings in the metropolis and its neighbourhood.	The following words in section 70: "but when such structure is situate elsewhere, it shall mean 'the commissioners of police of the metropolis' or such one of them as may be authorized by one of Her Majesty's principal secretaries of state to act in the matter of this Act." The following words in section 75: "and in the cases of payments in respect of any structure situate elsewhere within the limits of this Act be made by or to the receiver of metropolitan police." The following words in section 81: "subject to the approval of one of Her Majesty's principal secretaries of state;" and the following words in the same section: "and all expenses incurred by them not hereby otherwise provided for shall, in the case of expenses incurred by the said commissioners of police, be deemed to be expenses incurred by them in respect of the police force of which they are commissioners, and be payable accordingly."

AN ACT

TO AMEND THE METROPOLIS MANAGEMENT ACT, 1855, THE METROPOLITAN BUILDING ACT, 1855, AND THE ACTS AMENDING THE SAME RESPECTIVELY.

41 & 42 VICT. CAP. 32.

22ND JULY, 1878.

Section 1.

WHEREAS the provisions of the several Acts now in force within the metropolis are insufficient for duly regulating the erection and extension of houses and buidings in close proximity to certain roads, passages, and ways, and it is expedient that for such purpose further and better provisions should be made :

And whereas with a view to protect the public frequenting theatres and music halls within the metropolis from danger from fire it is expedient that provisions such as are in this Act contained should be made for empowering the metropolitan board of works (in this Act referred to as "the board") to cause alterations in existing theatres and music halls to be made in certain cases, and to make regulations with respect to the position and structure of new theatres and certain new music halls :

And whereas it is expedient to make provisions with respect to the making, filling up, and preparation of the foundations and sites of houses and buildings to be erected within the metropolis, and with respect to the quality of the substances to be used in the formation or construction of the sites foundations, and walls of such houses and buildings with a view to the stability of the same, the prevention of fires, and for purposes of health :

And whereas it is expedient to make further and better provision with respect to the payment of expenses incurred by the board in relation to dangerous structures :

And whereas for the purposes aforesaid it is expedient to amend the Metropolis Management Act, 1855, the Metropolitan Building Act, 1855, and the Acts amending the same respectively :

18 & 19 Vict. c. 120.
18 & 19 Vict. c. 122.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, as follows ; (that is to say,)

PRELIMINARY.

Short title.

1. This Act may be cited for all purposes as the Metropolis Management and Building Acts Amendment Act, 1878.

2. This Act shall extend and apply to the metropolis as defined by the Metropolis Management Act, 1855. **Section 2.**

Limits of Act. 18 & 19 Vict. c. 120

3. This Act shall consist of three parts.

Division of Act into three parts.

PART I.

4. In this part of this Act—

Interpretation

The term "roadway" in relation to any road, passage, or way shall mean the whole space open for traffic, whether carriage traffic and foot traffic or foot traffic only: "Roadway."

The term "centre of the roadway" in relation to any road, passage, or way existing at the time of the passing of this Act or thereafter formed shall mean the centre of the roadway of such road, passage, or way as existing immediately before the time when first after the passing of this Act or the formation of the same any house or building fronting towards or abutting upon such road, passage, or way was begun to be constructed or extended: "Centre of the roadway."

The term "the prescribed distance" (*a*) shall mean twenty feet from the centre of the roadway where such roadway is used for the purpose of carriage traffic, and ten feet from the centre of the roadway where such roadway is used for the purposes of foot traffic only. "The prescribed distance."

5. The Metropolis Management Act, 1855, and the Acts amending the same, and this part of this Act shall be construed together as one Act: Provided always, that nothing in this Act shall be held to limit or restrict the powers now vested in the commissioners of sewers of the city of London, or in any body or person elsewhere within the metropolis, by an Act passed in the session of parliament held in the fifty-seventh year of the reign of King George the Third, intituled "An Act for better paving, improving, and regulating the streets of the Metropolis and removing and preventing nuisances and obstructions therein."

Metropolis Management Acts and this part of Act to be construed as one Act.

18 & 19 Vict. c. 120.

57 Geo. 3, c. xxix.

6. From and after the passing of this Act no house or building begun to be constructed after the passing of this Act shall be constructed or begun to be constructed, and no house or building shall be extended or begun to be extended, in such manner that the external wall or front of any such house or building, or, if there be a forecourt or other space left in front of any such house or building, the external fence or boundary of such forecourt or other space, shall be at a distance less than the prescribed distance from the centre of the roadway of any road, passage, or way, whether a thoroughfare or not being a highway, without the consent in writing of the board (*c*): Provided always, that the board may, in any case where they think

As to erection of houses or buildings at less than prescribed distance from centre of roads, passages, or ways being highways (*b*).

(*a*) See 25 & 26 Vict. c. 102 s. 98, requiring existing roads, &c., laid out for building as streets, to be of the full width of forty feet for carriage traffic, and of twenty feet for foot traffic; and section 202 of the 18 & 19 Vict. c. 120, empowering the metropolitan board to make bye-laws for regulating the plans, &c., of new streets; and see the bye-laws of the board pursuant thereto.

(*b*) The Metropolis Management Amendment Act, 1862, section 75, prohibited the erection of buildings, &c., beyond the general line of buildings, without the consent in writing of the Metropolitan Board of Works.

(*c*) *i.e.*, the Metropolitan Board of Works; see recital in preamble.

PART I.
Section 6.

it expedient, consent to the construction, formation, or extension of any house, building, forecourt, or space at a distance less than the prescribed distance from the centre of the roadway of any such road, passage, or way, and at such distance from the centre of such roadway, and subject to such conditions and terms (if any) as they may think proper to sanction.

In every case where any such house, building, forecourt, or space is constructed, formed, or extended, or is begun to be constructed, formed, or extended, in contravention of the provisions of this section, at a distance from the centre of the roadway of any such road, passage, or way as aforesaid less than the prescribed distance, or than such other distance as may have been sanctioned by the board, or contrary to the conditions and terms (if any) subject to which such sanction was obtained, the board (*a*) may serve a notice upon the owner or occupier of the said house, building, forecourt, or space, or upon the builder or person engaged in constructing, forming, or extending the same, requiring him to comply with the provisions of this section, and to cause such house, building, forecourt, or space, or any part thereof, to be set back so that the external wall of such house or building, or the external fence or boundary of such forecourt or space, shall be at a distance not less than the prescribed distance from the centre of the roadway of such road, passage, or way as aforesaid, or at such distance and according to such conditions and terms (if any) as the board may have sanctioned.

Provided always, that the preceding provisions of this section shall not affect the construction or extension of any house or building within the limits of any area which may have been lawfully occupied by any house or building at any time within two years before the passing of this Act, or the construction or extension of any house or building lawfully in course of construction or extension at the time of the passing of this Act; and provided also, that the construction or extension of any house or building in or abutting upon any street existing, formed, or laid out for building at the time of the passing of this Act may be begun and completed in like manner in every respect as if the preceeding provisions of this section had not been made.

As to erection of houses or buildings at less than prescribed distance from centre of roads, passages, or ways not being highways.

7. Where after the passing of this Act any house or building begun to be constructed after the passing of this Act is constructed or is begun to be constructed, or any house or building is extended or begun to be extended, in such manner that the external wall or front of any such house or building, or, if there be a forecourt or other space left in the front of any such house or building, the external fence or boundary of such forecourt or space, is at a distance from the centre of the roadway of any road, passage, or way (not being a highway) less than the prescribed distance or less than such other distance as may have been sanctioned by the board as hereinafter provided, or where, in relation to any such house, building, or forecourt, or space constructed, formed, or extended at such less distance than the prescribed distance with the sanction of the board as aforesaid, the conditions or terms, if any, subject to which such sanction

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(*a*) By this enactment the metropolitan board are required to serve notice and take proceedings under section 8. By the 75th section of the Metropolis Management Amendment Act, 1862, the duty of taking proceedings in case of non-compliance with the Act, is cast upon the vestries and district boards.

was obtained have not been complied with, or the time during which such sanction was limited to continue has expired, then and in every such case, where it is intended that such road, passage, or way shall become a highway, a written notice to that effect shall be served upon the board, and thereupon the board may at any time within two months after the receipt of such notice serve a notice upon the owner or occupier of such house, building, forecourt, or space, or the builder or person engaged in constructing, forming, or extending the same, requiring him to cause the same, or any part thereof, to be set back so that the external wall or front of such house or building, or the external fence or boundary of such forecourt or space, shall be at a distance not less than the prescribed distance from the centre of the roadway of such road, passage, or way, or at such distance and according to such conditions and terms (if any) as the board may have sanctioned, and unless and until such first-mentioned notice has been given to the board and such last-mentioned notice (if any) has been complied with, such road, passage, or way shall not become a highway.

The board may consent to the construction, formation or extension of any house, building, forecourt, or space at any lesser distance than the prescribed distance from the centre of the roadway of any such road, passage, or way (not being a highway) as aforesaid, to be specified in such consent, or to the continuance of any house, building, forecourt, or space constructed, formed, or extended at such lesser distance, or to the continuance thereof for a limited time only, to be specified in such consent, in such cases and subject to such terms and conditions (if any) as they may think proper.

Provided always, that the preceeding provisions of this section shall not affect the construction or extension of any house or building within the limits of any area which may have been lawfully occupied by any house or building at any time within two years before the passing of this Act, or the construction or extension of any house or building lawfully in course of construction or extension at the time of the passing of this Act.

Proceedings in case of default in compliance with requirements of notice.

8. In case any owner, occupier, builder, or person during twenty-eight days (*b*) after the service of any notice under the preceding provisions of this part of this Act neglects or refuses to comply with the requirements of such notice, or after the expiration of such period fails to carry out or complete the works necessary for such compliance with all reasonable despatch, the board may cause complaint thereof to be made before a justice of the peace, who shall thereupon issue a summons, requiring such owner, occupier, builder, or person to appear at a time and place to be stated in the summons to answer such complaint, and if at the time and place appointed in such summons the said complaint is proved to the satisfaction of the justice before whom the same is heard, such justice shall make an order in writing on such owner, occupier, builder, or person directing him to comply with the requirements of such notice within such time as such justice may consider reasonable, and such justice shall also make an order for the payment of the costs incurred up to the time of hearing, and of hearing; and in case such owner, occupier, builder, or person makes default in complying with the requirements of such notice within the time limited by such order, he shall be liable to a penalty

(*b*) By the 45th section of the Metropolitan Building Act, 1845, the builder is required to amend irregularities within forty-eight hours.

PART I.
Section 8.

of not less than forty shillings and not more than five pounds, and to a further penalty of not less than ten shillings and not more than forty shillings for each day during which such default continues after the first day after the expiration of the time limited by such order for compliance with the requirements of such notice: Provided always, that this section shall not apply to any noncompliance with the notice of the board in the case of an intended highway where the same shall not be opened as a highway.

Streets, roads, &c., formed for foot traffic not to be used without consent of board for carriage traffic unless widened.

9. No street, road, passage, or way (being a highway) formed or laid out for foot traffic only after the passing of this Act shall, except with the consent of the board, be used for the purposes of carriage traffic, unless the space open for foot traffic and carriage traffic be of the full width of forty feet where there are houses or buildings on each side thereof, or, where there are houses or buildings only on one side thereof, unless there be a distance of not less than twenty feet from the centre of the space open for foot traffic and carriage traffic and the external walls or fronts of such houses or buildings, or, if there be forecourts or other spaces left in front of such houses or buildings, the external fences or boundaries of such forecourts or other spaces; and in case any person alters any such street, road, passage, or way, so that it may be used for any traffic other than foot traffic, contrary to the provisions of this section, or takes up or removes any post, bar, rail, flagstone, or knowingly does any act, matter or thing to facilitate the use of the same for traffic other than foot traffic, contrary to the provisions of this section, he shall for every such offence be liable to a penalty not exceeding fifty pounds.

Streets, roads, &c., formed for foot traffic before passing of Act not to be used without consent of justice for carriage traffic unless widened.

10. No street, road, passage, or way (being a highway) formed or laid out for foot traffic only before the passing of this Act shall be used for the purposes of carriage traffic for any longer period than seven consecutive days without the consent of a justice, unless the space open for foot traffic and carriage traffic be of the full width of forty feet where there are houses or buildings on each side thereof, or, where there are houses or buildings only on one side thereof, unless there be a distance of not less than twenty feet from the centre of the space open for foot traffic and carriage traffic and the external walls or fronts of such houses or buildings, or, if there be forecourts or other spaces left in front of such houses or building, the external fences or boundaries of such forecourts or other spaces, and any justice may grant such consent as aforesaid, or may do so subject to such terms and conditions as he may think fit; provided that twenty-eight days previous notice of any such application to a justice shall be served upon the board, and the board may appear at the time and place fixed for hearing such application and be heard thereon. In case any person alters any such street, road, passage, or way, so that it may be used for any traffic other than foot traffic, contrary to the provisions of this section, or to any conditions imposed by any such justice as aforesaid, or takes up or removes any post, bar, rail, flagstone, or knowingly does any act, matter, or thing to facilitate the use of the same for traffic other than foot traffic, contrary to the provisions of this section, he shall for every such offence be liable to a penalty not exceeding twenty pounds.

Power to board in certain cases to require

11. Whenever it appears to the board that any house or other place of public resort within the metropolis which was at the time of the passing of this Act authorized to be kept open for the public performance of stage plays, and which is kept open for such purpose,

proprietors of theatres and certain music halls in use at the time of the passing of this Act to remedy structural defects (*a*).

under the authority of letters patent from Her Majesty, her heirs and successors or predecessors, or of a license granted by the Lord Chamberlain of Her Majesty's household for the time being, or by justices of the peace, or that any house, room, or other place of public resort within the metropolis, containing a superficial area for the accommodation of the public of not less than five hundred square feet, which was at the time of the passing of this Act authorized to be kept open, and which is kept open, for dancing, music, or other public entertainment of the like kind, under the authority of a license granted by any court of quarter sessions, is so defective in its structure that special danger from fire may result to the public frequenting the same, then and in every such case the board may, with the consent of the Lord Chamberlain in the case of theatres under his jurisdiction, and of Her Majesty's Principal Secretary of State in all other cases, if in the opinion of the board such structural defects can be remedied at a moderate expenditure, by notice in writing require the owner of such house, room, or other place kept open for any of the purposes aforesaid, under such authority as aforesaid, to make such alterations therein or thereto as may be necessary to remedy such defects, within a reasonable time to be specified in such notice; and in case such owner fails to comply with the requirements of such notice within such reasonable time as aforesaid, he shall be liable to a penalty not exceeding fifty pounds for such default, and to a further penalty of five pounds for every day after the first day after the expiration of such reasonable time as aforesaid during which such default continues: Provided always, that any such owner may, within fourteen days after the receipt of any such notice as aforesaid, serve notice of appeal against the same upon the board, and thereupon such appeal shall be referred to an arbitrator to be appointed by Her Majesty's first commissioner of works at the request of either party, who shall hear and determine the same, and may, on such evidence as he may think satisfactory, either confirm the notice served by the board, or may confirm the same with such modifications as he may think proper, or refuse to confirm the same, and the decision of such arbitrator with respect to the requirements contained in any such notice, and the reasonableness of the same, and the persons by whom and the proportions in which the costs of such arbitration are to be paid, shall be final and conclusive and binding upon all parties.

In case of an appeal against any such notice, compliance with the requirements of the same may be postponed until after the day upon which such appeal shall be so decided as aforesaid, and the same, if confirmed in whole or in part, shall only take effect as and from such day.

Power to board to make regula-

12. The board may from time to time make, alter, vary, and amend such regulations as they may think expedient with respect to the requirements for the protection from fire of houses or other places of

(*a*) The term "public building," as interpreted by the 6th section of the Metropolitan Building Act, 1855, includes every building used as a theatre, public ball room, concert room, &c.; and by the 30th section of the Act, every public building shall be constructed in such a manner as may be approved by the district surveyor, or, in the event of disagreement, may be approved by the Metropolitan Board of Works; and save in so far as concerns the rules of construction, every public building shall be subject to all the provisions of the Act; section 22 of the same Act contains rules as to material of floors, lobbies, corridors, &c., of public and certain other buildings.

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Section 12.

tions with respect to new theatres and certain new music halls for protection from fire (*a*).

public resort within the metropolis to be kept open for the public performance of stage plays, and of houses, rooms, or other places of public resort within the metropolis containing a superficial area for the accommodation of the public of not less than five hundred square feet, to be kept open for public dancing, music, or other public entertainment of the like kind, under the authority of letters patent from Her Majesty, her heirs or successors, or of licenses by the Lord Chamberlain of Her Majesty's household, or by any justices of the peace, or by any court of quarter sessions, which may be granted for the first time after the passing of this Act; and may by such regulations prescribe the requirements as to position and structure of such houses, rooms, or places of public resort which may, in the opinion of the board, be necessary for the protection of all persons who may frequent the same against dangers from fires which may arise therein or in the neighbourhood thereof; provided that the board may from time to time in any special case dispense with or modify such regulations, or may annex thereto conditions if they think it necessary or expedient so to do.

The board shall, after the making, altering, varying, or amending of any such regulations, cause the same to be printed, with the date thereof, and a printed copy thereof shall be kept at the office of the board, and all persons may at all reasonable times inspect such copy without payment, and the board shall cause to be delivered a printed copy, authenticated by their seal, of all regulations for the time being in force to every person applying for the same, on payment by such person of any sum not exceeding five shillings for every such copy.

A printed copy of such regulations, dated and authenticated by the seal of the board, shall be conclusive evidence of the existence and of the due making of the same in all proceedings under the same, without adducing proof of such seal or of the fact of such making.

From and after the making of any such regulations it shall not be lawful for any person to have or keep open any such house, room, or other place of public resort for any of the purposes aforesaid, unless and until the board grant to such person a certificate in writing under their seal, to the effect that such house, room, or other place on its completion in accordance with the regulations made by the board in pursuance of the provisions of this Act for the time being in force, and in so far as the same are applicable to such house or other place, and to the conditions (if any) annexed thereto by the board.

In case any such house, room, or place of public resort is opened or kept open by any person for any of the purposes aforesaid, contrary to the provisions of this enactment, such person shall be liable to a penalty not exceeding fifty pounds for every day on which such house or place of public resort is so kept open as aforesaid.

Provisional license for new premises.

13. A person interested in any premises about to be constructed, or in course of construction, which are designed to be licensed and used within the metropolis for the public performance of stage plays, or for public dancing, music, or other public entertainment of the like kind, may apply to the licensing authority for the grant of a provisional license in respect of such premises. The grant of such provi-

(*a*) These regulations presumably take effect without the sanction and formalities applicable to bye-laws under section 16.

sional license shall, in respect of the discretion of the licensing authority and procedure, be subject to the same conditions as those applicable to the grant of a like license which is not provisional. A provisional license so granted shall not be of any force until it has been confirmed by the licensing authority; but the licensing authority shall confirm the same on the production by the applicant of a certificate by the board that the construction of the premises has been completed in accordance with the regulations and conditions made by the board as hereinbefore provided, and on being satisfied that no objection can be made to the character of the holder of such provisional license.

PART I.
Section 13.

PART II.

PART II.

Interpretation.

14. In this part of this Act—

"Foundations."

The term "foundations" shall mean the space immediately beneath the footings of a wall:

"Site."

The term "site" in relation to a house, building, or other erection shall mean the whole space to be occupied by such house, building, or other erection between the level of the bottom of the foundations and the level of the base of walls (*b*).

18 & 19 Vict. c. 122, &c., and this part of this Act to be construed as one Act.

15. The Metropolitan Building Act, 1855, and the Acts amending the same, and this part of this Act shall be construed together as one Act.

Power to board to make bye-laws with respect to sites and foundations.

16. The board may from time to time make, alter, vary, amend, and repeal such bye-laws as they may think expedient with respect to the following matters; that is to say,

(1.) The foundations of houses, building, and other erections (*c*), and the sites of houses, buildings, and other erections to be constructed after the passing of this Act, and the mode in which and the materials with which such foundations and sites shall be made, formed, excavated, filled up, prepared, and completed for securing stability, the prevention of fires, and for purposes of health:

(2.) The description and quality of the substances of which walls are authorized to be constructed by section twelve of the Metropolitan Building Act, 1855, for securing stability, the prevention of fires, and for purposes of health (*d*).

18 & 19 Vict. c. 122, s. 12.

(3.) The duties of district surveyors in relation to such foundations and sites and substances, and for the guidance and control of such district surveyors in the exercise and discharge of such duties:

(*b*) By section 3 of the Metropolitan Building Act, 1855, the base of the wall" means the course immediately above the footings.

(*c*) No provision was made in the Metropolitan Building Act, 1855, for the objects contemplated by this enactment, the 12th section and first schedule merely directing that foundations should rest on the solid ground or upon concrete, or other solid substance.

(*d*) Section 12 of the Metropolitan Building Act, 1855, provides that walls shall be constructed of such substances and of such thickness and in such manner as are mentioned in the first schedule to the Act.

PART II.
Section 16.

(4.) The regulation of the amounts of the fees to be paid to such district surveyors in respect of the duties imposed upon them by any such bye-laws or by this Act.

The board may further provide by any bye-law that in any case in which the board think it expedient they may dispense with the observance of any bye-law made under the authority of this part of this Act, subject to such terms and conditions, if any, as they may think proper; and such terms and conditions may be enforced in like manner in every respect as if the same had been enacted by such bye-law.

The board may, subject as hereinafter mentioned, further provide for the due observance of such bye-laws by enacting therein such provisions as they think fit as to the deposit of plans and sections of public buildings, and buildings to which section fifty-six of the Metropolitan Building Act, 1855, applies, which shall be constructed after the passing of this Act and as to inspection by the district surveyor or other officer of the board, of houses, buildings, and other erections to be constructed after the passing of this Act, and of the plans and sections relating thereto, and as to the power of the board to cause the removal, alteration, or pulling down of any house, building, or other erection or work done or begun in contravention of any such bye-law, and by imposing such reasonable penalties as they think fit, not exceeding five pounds, for each breach of such bye-law, and in case of a continuing offence a further penalty not exceeding forty shillings for each day after notice of such offence from the board or district surveyor.

18 & 19 Vict. c. 122, s. 56.

Any bye-law made in pursuance of this section, and any alteration, variation, and amendment made therein, and any repeal of a bye-law, shall not be of any validity until it has been confirmed by one of Her Majesty's principal secretaries of state.

A bye-law made under this section shall not, nor shall any alteration, variation, or amendment therein or repeal thereof, be confirmed by one of Her Majesty's principal secretaries of state until the expiration of two months after a copy of the bye-law, together with notice of the intention to apply for confirmation of the same, has been published by the board, once at least in each of two consecutive weeks, in two or more newspapers circulating in the metropolis, and copies of such bye-law and notice have been delivered at the office of the Royal Institute of British Architects and of the Institution of Surveyors, and to such other societies and persons as such principal secretary of state may direct; and any person affected by any such proposed bye-law, or alteration, variation, or amendment in or repeal of any bye-law, may forward notice of his objection to such secretary of state, who shall take the same into consideration.

All the provisions contained in sections two hundred and two and two hundred and three of the Metropolis Management Act, 1855, as to the making, publication, and evidence of bye-laws made by the board under the authority of the said Act, and as to penalties for breach of the same, and the remission of such penalties, shall extend and apply to the making, publication, and evidence of bye-laws made by the board under the authority of this Act, and to penalties for breach of any such bye-laws, and the remission of such penalties.

18 & 19 Vict. c. 120, ss. 202, 203.

Provisions to buildings, &c., not erected on

17. In case any house, building, or other erection begun to be constructed after the passing of this Act is constructed or begun to be constructed upon any foundations or site or with any substances which have not been made, filled up, and prepared, or which are

foundations or areas conformable with bye-laws, &c.

not in description and quality in accordance with the provisions of the bye-laws relating thereto made under the authority of this Act, or in accordance with the terms and conditions subject to which the board may have dispensed with the observance of any such provisions, the district surveyor may forthwith, by notice to be served on the occupier of such house, building, or other erection, or on the builder, owner, or other person engaged in constructing any such house, building, or other erection as aforesaid, require him to alter, pull down, or remove such house, building, or other erection, or any part thereof, as he may think proper; and in case any such occupier, builder, owner, or other person, during twenty-eight days after the service of such notice, fails to comply with the requirements of such notice, he shall be liable to a penalty of not less than ten shillings and not more than forty shillings for every day from the the time of the service of such notice as aforesaid until such house, building, or other erection, or such part thereof, is altered, pulled down, or removed in accordance with the terms of such notice, and every such penalty shall be in addition to any other penalty for breach of any bye-law.

Provided always, that, notwithstanding the imposition and recovery of any penalty, the board at any time after default in compliance with the requirements of such notice, if they think proper, may cause complaint thereof to be made before a justice of the peace, who shall thereupon issue a summons requiring such occupier, builder, owner, or other person to appear at a time and place to be stated in the summons to answer such complaint, and if at the time and place appointed in such summons the said complaint is proved to the satisfaction of the justice before whom the same is heard, such justice may make an order in writing authorizing the board to enter and alter, pull down, or remove such house, building, or other erection, or any part thereof, and do whatever may be necessary for such purpose, and also to remove the materials of which the same was composed to a convenient place, and (unless the expenses of the board be paid to them within fourteen days) subsequently sell the same as they think proper; [and all expenses incurred in respect of such entering and altering, pulling down, or removing any such house, building, or other erection, and in disposing of the said materials, may be deducted by the board out of the proceeds of such sale, and the balance, if any, shall be paid by the board to the person entitled thereto; and in case such materials are not sold by the board, or in case the proceeds of the sale of the same are insufficient to defray the expenses incurred by the board as aforesaid, the board may recover such expenses or such insufficiency from such occupier, builder, owner, or other person, together with all costs and expenses in respect thereof, in like manner as if the same were a penalty imposed by this Act.

Power to appeal.

18. Any person affected by any notice under the preceding provisions of this part of this Act may, within seven days after the service of the same, appeal to the board.

All such appeals shall stand referred to the committee of appeal appointed by the board under and in pursuance of section two hundred and twelve of the Metropolis Management Act, 1855, for hearing appeals, who may hear and determine the same, and may order the district surveyor, or any other surveyor, to inspect any foundations, site, house, building, or other erection, and may, on such evidence as they think satisfactory, either confirm the notice served by the district surveyor, or may confirm the same with such modifications as they think proper, or refuse to confirm the same.

18 & 19 Vict. c. 120, s. 212.

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Section 18.

In case of an appeal against any such notice, compliance with the requirements of the same may be postponed until after the day upon which such appeal shall be so decided as aforesaid, and the same, if confirmed in whole or in part, shall only take effect as and from such day.

Amendment of section 74 of 18 & 19 Vict. c. 122, with respect to sale of dangerous structures.

19. Where under the provisions of the Metropolitan Building Act, 1855, and the Acts amending the same, with respect to dangerous structures, any structure is sold for payment of the expenses incurred in respect thereof by the board in manner prescribed by section seventy-four of the said Act, the person to whom the same is sold (hereinafter referred to as "the purchaser"), his agents and servants, may enter upon the land whereon such structure is standing for the purpose of taking down the same and of removing the materials of which the same is constructed, and any person who refuses to admit the purchaser, his agents or servants, upon such land, or impedes him in removing such materials, shall be liable on conviction to a penalty not exceeding ten pounds, and to a further penalty of five pounds for every day after the first day during which such refusal continues.

Where the proceeds of the sale of any such structure under the said seventy-fourth section are insufficient to repay the board the amount of the expenses incurred by them in respect of such structure, no part of the land whereon such structure stands or stood shall be built upon until after the balance due to the board in respect of such structure shall have been paid to the board.

Part II of Act not to apply to city of London.

20. Provided always, that the provisions of Part II. of this Act shall not extend or apply to the city of London.

PART III.

PART III.

Power for architect and persons authorized by board, and district surveyor, to enter and inspect theatres, music halls, buildings, and works.

21. The architect of the board, and any other person authorized by the board in writing under their seal, may, at all reasonable times after completion or during construction, enter and inspect any house, room, or other place kept open or intended to be kept open for the public performance of stage plays, or for public dancing, music, or other public entertainment of the like kind affected by any of the provisions of this Act, or of any regulations made in pursuance thereof; and the district surveyor of any district may at all reasonable times during the progress and the three months next after the completion of any house, building, erection, or work in such district affected by and not exempted from any of the provisions of this Act, or by any bye-law made in pursuance of this Act, or by any terms or conditions upon which the observance of any such provisions or any of such bye-laws may have been dispensed with, enter and inspect such house, building, erection, or work; and if any person refuses to admit such architect, person, or surveyor, or to afford him all reasonable assistance in such inspection, in every such case the person so refusing shall incur for each offence a penalty not exceeding twenty pounds.

Power to owners, &c., to enter houses, &c., to comply with

22. For the purpose of complying with the requirements of any notice or order served or made under the provisions of this Act on any owner, builder, or person in respect of any house, building, or other erection, room, or place, such owner, builder, or person, his servants, workmen, and agents, may, after giving seven days' notice

in writing to the occupier of such house, building, or other erection, room, or place, and on production of such notice or order, enter such house, building, or other erection, room, or place, and do all such works, matters, and things therein or thereto, or in connexion therewith, as may be necessary; and if any person refuses to admit such owner, builder, or person, or his servants or workmen or agents, or to afford them all reasonable assistance, such person shall incur for each offence a penalty not exceeding twenty pounds.

notices or order.

23. Every penalty imposed by part I. and part III. of this Act may be recovered by summary proceedings before any justice in like manner and subject to the like right of appeal as if the same were a penalty recoverable by summary proceedings under the Metropolis Management Act, 1855, and the Acts amending the same; and every penalty imposed by part II. of this Act, or by any bye-law made in pursuance thereof, may be recovered by summary proceedings before any justice in like manner and subject to the like right of appeal as if the same were a penalty recoverable by summary proceedings under the Metropolitan Building Act, 1855, and the Acts amending the same: Provided always, that in any proceedings against any person for more than one penalty in respect of one or more breach or breaches of any provision of this Act or of any bye-law made in pursuance of this Act, it shall be lawful to include in one summons all such penalties, and the charge for such summons shall not exceed two shillings.

Recovery of penalties.

18 & 19 Vict. c. 120.

18 & 19 Vict. c. 122.

24. Her Majesty's royal palaces, and all buildings, works, and grounds excepted from the operation of the Metropolis Management Act, 1855, and the Acts amending the same, or of any of the said Acts, shall be excepted from the operation of the provisions of this Act which are to be constructed with such Acts, and all exemptions from the provisions of any of the said Acts shall extend to such of the provisions of this Act as are to be construed as aforesaid with such Acts.

Exceptions from Metropolis Management Acts extended to this Act.

18 & 19 Vict. c. 120 (*a*).

25. Her Majesty's royal palaces, and all buildings, works, and grounds excepted from the operation of the Metropolitan Building Act, 1855, and the Acts amending the same, or of any of the said Acts, shall be excepted from the operation of the provisions of this Act which are to be construed with such Acts, and all exemptions from the provisions of any of the said Acts shall extend to such of the provisions of this Act as are to be construed as aforesaid with such Acts.

Exceptions from Metropolitan building Acts extended to this Act.

18 & 19 Vict. c. 122 (*b*).

26. Nothing in this Act, or in any bye-law of the board thereunder, shall apply to the Inner Temple, the Middle Temple, Lincoln's

Act not to apply to the Inner and

(*a*) These exceptions are apparently contained in the 237th section of the Metropolis Management Act, 1855 (Ely Place, &c.); the 240th section relating to the Crown Estates Paving Act, 1851, the 240th section saving rights of Her Majesty's commissioners of works, &c.; the 116th section of the Metropolis Local Management Amendment Act, 1862, saving the rights of the crown and the duchy of Lancaster; the 117th section with a like enactment relating to the duchy of Cornwall; the 242nd section as to the powers of the city commissioners of sewers; the 243rd section as to the rights of metropolitan sewage manure company; the 244th section saving rights of commissioners or trustees of turnpike roads; and the 245th section saving the powers of the metropolitan commissioners of police.

(*b*) These exceptions are contained in the 6th section of that Act, and the 2nd section of the Metropolitan Buildings Amendment Act, 1861.

PART III.

Section 26.

Middle Temple, &c.

Inn, Gray's Inn, Staple Inn, Furnival's Inn, or the close of the collegiate church of Saint Peter, Westminster.

Saving rights of the crown and the duchy of Lancaster.

27. Nothing contained in this Act, or in any bye-law thereunder made, shall apply to or shall authorize or empower the board, or any vestry, district board, or district surveyor, to take, use, or in any manner interfere with any land, soil, tenements, or hereditaments, or any rights of whatsoever nature, belonging to or enjoyed or exercisable by the Queen's most Excellent Majesty in right of her crown, or in right of her duchy of Lancaster, without the consent in writing of the commissioners for the time being of Her Majesty's woods, forests, and land revenues, or one of them, on behalf of Her Majesty, in right of her crown, first had and obtained for that purpose (which consent such commissioners are hereby respectively authorized to give), or without the consent in like manner of the chancellor of the said duchy, on behalf of Her Majesty, in right of her said duchy; neither shall anything contained in this Act, or in any bye-law thereunder made, extend to divest, take away, prejudice, diminish, or alter any estate, right, privilege, power, or authority vested in or enjoyed or exerciseable by the Queen's Majesty, her heirs or successors, in right of her crown, or in right of her said duchy; and nothing contained in part I. of this Act shall apply to the extension of Savoy Street or the bridge which the chancellor and council of the said duchy are by the Metropolitan Board of Works (Various Powers) Act, 1875 (*a*), empowered to make and construct, or to any house or building within the precinct of the Savoy, or upon the land mentioned in section six (*b*) of the last-mentioned Act, constructed or extended after the passing of this Act, in or abutting upon any road, passage, or way existing, formed, or laid out at the time of the passing of this Act.

(*a*) Which gives power to the metropolitan board of works to make improvements in connection with the Victoria Embankment in and near the precinct of the Savoy.

(*b*) Providing that the board may surrender to the duchy of Lancaster two strips of land, parts of, and at the easternmost end of the board's vacant ground; and any land so granted shall be deemed to be part of the improvable ground in the liberty of the Savoy, within the meaning of certain letters patent of the 11th of October, 51 George 3.

AN ACT

FOR THE ESTABLISHMENT OF A FIRE BRIGADE WITHIN THE METROPOLIS.

28 & 29 VICT. CAP. 90.

5TH JULY, 1865.

WHEREAS it is expedient to make further provision for the protection of life and property from fire within the metropolis: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This Act may be cited for all purposes as the "Metropolitan Fire Brigade Act, 1865." (*c*).

Definition of "Metropolis" and "Insurance Company."

2. For the purposes of this Act the "metropolis" shall mean the city of London and all other parishes and places for the time being within the jurisdiction of the metropolitan board of works:

"Insurance Company" shall include any persons corporate or

(*c*) This Act, which came into operation on the 1st January, 1866, imposes upon the metropolitan board, the duty of extinguishing fires and protecting life and property in case of fire within the metropolis, and amongst other provisions it empowered the board to take on lease, purchase, or otherwise acquire station houses or land for affecting its purposes. The stations, plant, and other property belonging to the fire engine establishments of the insurance companies in the metropolis are transferred to the board. It establishes a fire brigade with power to the board to make regulations for the training, discipline, &c. of the men belonging to it. It authorizes vestries to allow compensation to engine keepers hitherto employed in the service of fire engines, and requires fire insurance companies to pay to the board an annual contribution to the expenses of executing the Act, and the commissioners of the treasury to pay to the board, by way of contribution to the expenses, such sums as parliament may from time to time grant within a stated limit. This Act contains provisions for meeting expenses not specially provided for, and empowers the board, with the consent of the treasury, to borrow money; but those sections are now repealed by the Metropolitan Board of Works (Loans) Act, 1869, which substitutes other powers for these purposes, which are referred to in the notes, *infra*.

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unincorporate, or any person carrying on the business of fire insurance.

Definition of "Metropolis Local Management Acts."

3. The expression "Metropolis Local Management Acts" shall mean the Acts following; that is to say, "The Metropolis Management Act, 1855," "The Metropolis Management Amendment Act, 1856," and "The Metropolis Management Amendment Act, 1862."

Establishment and Duties of Fire Brigade.

Duty of metropolitan board in relation to fires.

4. On and after the first day of January one thousand eight hundred and sixty six the duty of extinguishing fires and protecting life and property in case of fire shall within the metropolis be deemed for the purposes of this Act to be entrusted to the metropolitan board of works; and with a view to the performance of that duty it shall be lawful for them to provide and maintain an efficient force of firemen, and to furnish them with all such fire engines, horses, accoutrements, tools, and implements as may be necessary for the complete equipment of the force, or conducive to the efficient performance of their duties.

Purchase of buildings and land.

5. The said board, hereinafter referred to as the board, may take on lease, purchase, or otherwise acquire stations for engines, stables, houses for firemen, and such other houses, buildings, or land as they may think requisite for carrying into effect the purposes of this Act, and may from time to time sell any property acquired by or vested in them for the purposes of this Act:

The board may also contract with any company or persons authorized to establish the same for the establishment of telegraphic communication between the several stations in which their fire engines or firemen are placed, and between any of such stations and other parts of the metropolis.

Transfer of plant of existing fire offices.

6. On and after the said first day of January one thousand eight dred and sixty-six all stations, fire engines, fire escapes, plant, and other property belonging to or used by the fire engine establishment of the insurance companies in the metropolis shall vest in or be conveyed or assigned to the board for all the estate and interest of the said companies therein, upon trust to be applied by the board to the purposes of this Act, but subject to all legal liabilities and obligations attaching thereto, including the payment of all pensions that have been granted to the members of the said fire engine establishment, according to a list that has been furnished to the chairman of the said board by the chief officer of the said fire engine establishment, and all trustees for the same shall be indemnified against such liabilities and obligations. The board may also, if they think fit, purchase the stations, fire engines, and plant belonging to any parish, place, or body of persons within their jurisdiction.

Constitution of fire brigade.

7. The force of firemen established under this Act, hereinafter called the metropolitan fire brigade, shall be under the command of an officer, to be called the chief officer of the metropolitan fire brigade.

The chief officer and men composing the said fire brigade shall be appointed and removed at the pleasure of the board.

Salaries of fire brigade.

8. The board shall pay such salaries as they think expedient to the

said fire brigade. They may also make such regulations as they think fit with respect to the compensation to be made to them in case of accident, or to their wives or families in case of their death; also with respect to the pensions or allowances to be paid to them in case of retirement; also with respect to the gratuities to be paid to persons giving notices of fires; also with respect to gratuities by way of a gross sum or annual payment to be from time to time awarded to any member of the said force, or to any other person, for extraordinary services performed in cases of fire; also with respect to gratuities to turncocks belonging to waterworks from which a supply of water is quickly derived. Section 8.

Power to make regulations for fire brigade.

9. The board may by bye-laws make regulations for the training, discipline, and good conduct of the men belonging to the said fire brigade, for their speedy attendance with engines, fire escapes, and all necessary implements on the occasion of any alarm of fire, and generally for the maintenance in a due state of efficiency of the said brigade, and may annex to any breach of such regulations penalties not exceeding in amount forty shillings, but no bye-law under this section shall be of any validity unless it is made and confirmed in manner directed by the Metropolis Local Management Acts; and all provisions of the said Acts relating to bye-laws shall, with the necessary variations, apply to any bye-laws made in pursuance of this Act.

Compensation to parish officers.

10. The vestry of any parish or place in the metropolis may allow such compensation as they think just to any engine keeper or other person employed in the service of fire engines who has hitherto been paid out of any rate raiseable in such parish or place, and who is deprived of his employment by or in consequence of the passing of this Act, and any compensation so allowed shall be paid out of the rate out of which the salary of the officer so compensated was payable.

As to purchase of fire escapes.

11. The board may make such arrangements as they think fit as to establishing fire escapes throughout the metropolis. They may for that purpose contribute to the funds of the Royal Society for the Protection of Life from Fire, or of any existing society that provides fire escapes, or may purchase or take by agreement the property of any existing society in their stations and fire escapes, and generally may maintain such fire escapes and do such things as they think expedient towards aiding persons to escape from fire; and any expenses incurred by them in pursuance of this section shall be deemed to be expenses incurred in carrying into effect this Act.

As to powers of fire brigade.

12. On the occasion of a fire the chief or other officer in charge of the fire brigade may, in his discretion, take the command of any volunteer fire brigade or other persons who voluntarily place their services at his disposal, and may remove, or order any fireman to remove, any persons who interfere by their presence with the operations of the fire brigade, and generally he may take any measures that appear expedient for the protection of life and property, with power by himself or his men to break into or through, or take possession of, or pull down any premises for the purpose of putting an end to a fire, doing as little damage as possible; he may also on any such occasion cause the water to be shut off from the mains and pipes of any district, in order to give a greater supply and pressure of water in the district in which the fire has occurred; and no water company shall be liable to any penalty or claim by reason of any interruption of

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the supply of water occasioned only by compliance with the provisions of this section.

All police constables shall be authorized to aid the fire brigade in the execution of their duties. They may close any street in or near which a fire is burning, and they may of their own motion, or on the request of the chief or other officer of the fire brigade, remove any persons who interfere by their presence with the operations of the fire brigade.

Any damage occasioned by the fire brigade in the due execution of their duties shall be deemed to be damage by fire within the meaning of any policy of insurance against fire.

Expenses.

Contributions by insurance offices.

13. Every insurance company that insures from fire any property in the metropolis shall pay annually to the metropolitan board of works, by way of contribution towards the expenses of carrying this Act into effect, a sum after the rate of thirty-five pounds in the one million pounds on the gross amounts insured by it, except by way of reassurance, in respect of property in the metropolis for a year, and at a like rate for any fractional part of a million, and for any fractional part of a year as well as for any number of years for which the insurance may be made, renewed, or continued.

The said payments by insurance companies shall be made quarterly in advance, on the first of January, first of April, first of July, and first of October in every year; the first of such payments to be made on the first of January one thousand eight hundred and sixty-six, and such first payment and the other payments for the year one thousand eight hundred and sixty-six to be based upon the amounts insured by the several companies in respect of property in the metropolis in the year ending the twenty-fourth of December one thousand eight hundred and sixty-four: provided that any insurance company which at the time of the passing of this Act contributes to the expenses of the said fire engine establishment may, in respect of all payments to be made by it in the years one thousand eight hundred and sixty-six and one thousand eight hundred and sixty-seven, but not afterwards, contribute after the yearly rate of thirty-five pounds in one million pounds of the business in respect of which it contributes to the said fire engine establishment for the present year, according to a return which has been furnished to the chairman of the said metropolitan board, instead of in the manner in this Act provided (*a*).

Mode of enforcing contributions.

14. All contributions due from an insurance company to the board in pursuance of this Act shall be deemed to be specialty debts due from the company to the board, and be recovered accordingly.

Mode of ascertaining proportions of contribution.

15. For the purpose of ascertaining the amount to be contributed by every such insurance company as aforesaid, every insurance company insuring property from fire in the metropolis shall, on the thirtieth day of December one thousand eight hundred and sixty-five, with respect to the amounts insured in the year one thousand eight hundred and sixty-four, and on the first of June one thousand eight hundred and sixty-six, and on every succeeding first of June,

(*a*) By the Statute Law Revision Act, 1875, the latter part of this section, beginning "the first of such payments," is expressly repealed.

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or on such other days as the metropolitan board of works may appoint, make a return to the said board, in such form as they may require, of the gross amount insured by it in respect of property in the metropolis.

There shall be annexed to the return so made a declaration made by the secretary or other officer performing the duties of secretary of the company by whom it is made, stating that he has examined the return with the books of the company, and that to the best of his knowledge, information, and belief it contains a true and faithful account of the gross amount of the sums insured by the company to which he belongs in respect of property in the metropolis.

The return made in the June of one year shall not come into effect till the first of January of the succeeding year, and shall be the basis of the contributions for that year.

Penalty on insurance company not making return.

16. If any insurance company makes default in making such returns to the board as are required by this Act, it shall be liable to a penalty (*b*) not exceeding five pounds for every day during which it is so in default.

Examination of books of insurance companies.

17. The secretary or other officer having the custody of the books and papers of any insurance company that is required to pay a contribution to the board in pursuance of this Act shall allow any officer appointed by the board to inspect, during the hours of business, any books and papers that will enable him to ascertain the amount of property insured by such company in the metropolis, and the amount for which it is insured, and to make extracts from such books or papers; and any secretary or other such officer as aforesaid of a company failing to comply with the requisitions of this section in respect of such inspections and extracts shall be liable on summary conviction to a penalty not exceeding five pounds for each offence.

Contributions by Government towards expense of brigade.

18. The commissioners of Her Majesty's treasury shall pay or cause to be paid to the board by way of contribution to the expenses of maintaining the fire brigade such sums as parliament may from time to time grant for that purpose, not exceeding in any one year the sum of ten thousand pounds.

Expenses of Act not specially provided for (*c*).

19. For the purpose of defraying all expenses that may be incurred by the board in carrying into effect this Act which are not otherwise provided for, the board may from time to time issue their precepts to the overseers of the poor of every parish or place within the metropolis, requiring the overseers to pay over the amount mentioned in the precepts to the treasurer of the board or into a bank to be named in the precepts within forty days from the delivery of the precept.

The overseers shall comply with the requisitions of any such precept by paying the sums mentioned out of any moneys in their hands applicable to the relief of the poor, or by levying the amount required as part of the rate for the relief of the poor, but no contribution

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(*b*) As to recovery of penalties, see section 24.

(*c*) This, and the 20th and 21st sections, are repealed (with the savings expressed) by the Metropolitan Board of Works (Loans) Act, 1869, section 50, and schedule 3, and by the 22nd section of that Act empowering the Board to levy a consolidated rate, they are required, in making any estimate, to compute the part required in respect of securities or stock issued for the purposes of the Main Drainage Acts and the Fire Brigade; and in

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required to be paid by any parish or place under this section shall exceed in the whole in any one year the rate of one halfpenny in the pound on the full and fair annual value of property rateable to the relief of the poor within the said parish or place, such full and fair annual value to be computed in all parts of the metropolis, exclusive of the city of London, according to the last valuation for the time being acted on in assessing the county rate, or, where there is no county rate, according to a like estimate or basis; and no liberty, precinct, or place shall be exempt from the rate leviable for the purposes of this Act by reason of its being extra-parochial or otherwise; and in default of proper officers in any liberty, precinct, or place to assess or levy the said rate, the board may appoint such officers, and add the amount of any expenses so incurred to the amount to be raised by the next succeeding rate in such liberty, precinct, or place.

Overseers shall for the purposes of levying any amount required to be levied by them under this Act, have the same powers and be subject to the same obligations as in levying a rate for the relief of the poor.

The word "overseers" shall include any persons or bodies of persons authorised or required to make and collect or cause to be collected rates applicable to the relief of the poor; and such persons or bodies shall pay to the board the amount so mentioned in the precept out of the said rates.

Penalty on non-payment of rate by overseers (*a*).

20. In case the amount ordered by any such precept as aforesaid to be paid by the overseers of any parish or place be not paid in manner directed by such precept and within the time therein specified for that purpose, it shall be lawful for any justice of the peace, upon the complaint by the board or by any person authorised by the board, to issue his warrant for levying the amount or so much thereof as may be in arrear by distresss and sale of the goods of all or any of the said overseers, and in case the goods of all the overseers be not sufficient to pay the same, the arrears thereof shall be added to the amount of the next levy which is directed to be made in such parish or place for the purposes of this Act, and shall be collected by the like methods.

Power to Board, with consent of Treasury, to borrow not exceeding £40,000 (*b*).

21. The board may, with the consent of the commissioners of Her Majesty's treasury, borrow any sum not exceeding forty thousand pounds, and apply the same for the purposes of this Act; and all powers contained in the metropolis local management Acts authorising the board to borrow money, or any commissioners or persons to

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making an estimate for the purposes of the Fire Brigade Act, the Board shall not estimate the sum required as larger than a sum which would be produced by a rate of one halfpenny in the pound on the gross value of the property assessed to the metropolitan consolidation rate. The Metropolitan Board of Works (Loans) Acts, 1875, section 3, limits the amount the Board are authorised to expend for the purposes of this Act up to the 31st December, 1876; and similar restrictive provisions are contained in subsequent Acts up to the dates therein specified, viz., the Metropolitan Board of Works (Loans) Act, 1876, up to 31st December, 1877; the Metropolitan Board of Works (Money) Act, 1877, up to 31st December, 1878; and the Metropolitan Board of Works (Money) Act, 1878, up to 31st December, 1879.

(*a*) See note to section 19, *ante*.

(*b*) See note to section 19, *ante*. By the Metropolitan Board of Works (Loans) Act, 1869, section 36, the Board are empowered to create consolidated

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lend money to the board, and all other provisions as to the mode of borrowing, the repayment of principal or interest, or in anywise relating to borrowing by the board, shall be deemed to apply and to extend to this Act in the same manner as if the moneys borrowed in pursuance of this Act were moneys borrowed for the purpose of defraying the expenses of the metropolis local management Acts, or one or more of those Acts. The board shall apply the moneys received by them under this Act in liquidation of the principal and interest of the moneys so borrowed, but no creditor shall be concerned to see to such application, or be liable for any misapplication of the moneys received or borrowed by the board in pursuance of this Act.

Miscellaneous.

Power to turn discharged officers or men out of houses provided for them.

22. Where any chief officer, or other person who has been employed by the board in any capacity under this Act, and has been discharged therefrom, continues to occupy any house or building that may be provided for his use, or any part thereof, after one week's notice in writing from the board to deliver up possession thereof, it shall be lawful for any police magistrate, on the oath of one witness, stating such notice to have been given, by warrant under his hand to order any constable to enter into the house or building occupied by such discharged chief officer or other person as aforesaid, and to remove him and his family and servants therefrom, and afterwards to deliver the possession thereof to the board, as effectually, to all intents and purposes, as the sheriff having jurisdiction within the place where such house or building is situate might lawfully do by virtue of a writ of possession or a judgment at law.

Penalty where chimneys are on fire.

23. If the chimney of any house or other building within the metropolis is on fire, the occupier of such house or building shall be liable to a penalty not exceeding twenty shillings; but if such occupier proves that he has incurred such penalty by reason of the neglect or wilful default of any other person, he may recover summarily from such person the whole or any part of the penalty he may have incurred as occupier.

Recovery of penalties.(*c*)

24. All penalties imposed by this Act, or by any bye-law made in pursuance thereof, and all expenses and other sums due to the board in pursuance of this Act, in respect of which no mode of recovery is prescribed, may be recovered summarily before two justices in manner directed by the Act of the Session holden in the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, or any Act amending the same, and when so recovered

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stock for the purpose of raising, in addition to the loans authorised by the Acts mentioned in the first schedule, such further sums as the Treasury may sanction, for the purpose, amongst others, of providing station houses, fire engines, fire escapes, and permanent plant, for the purposes of this Act, and all the provisions of the Act are to apply as if such sums were loans authorised by this Act and the other Acts referred to.

(*c*) See as to application of penalties under the Metropolis Management Acts, section 105 of 25 & 26 Vict. c. 102, *ante*, providing for penalties recovered by the Metropolitan Board and Vestries and District Boards, and the enactments and decisions referred to in the note to that section.

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shall be paid to the treasurer of the board, notwithstanding any police Act or other Act of parliament directing a different appropriation of such moneys.

Summary proceedings for determining certain matters.

25. Any dispute or other matter which is by this Act directed to be determined summarily by two justices shall be deemed to be a matter in respect of which a complaint is made upon which they have authority by law to make an order for payment of money within the meaning of the said Act of the session holden in the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, or any Act amending the same.

Extension of powers given to two justices.

26. Any act, power, or jurisdiction hereby authorized to be done or exercised by two justices may be done or exercised by the following magistrates within their respective jurisdictions: that is to say, by any metropolitan police magistrate sitting alone at a police court or other appointed place, or by the Lord Mayor of the city of London, or any alderman of the said city, sitting alone or with others at the Mansion House or Guildhall.

Audit of accounts, and report by Board.(*a*)

27. The accounts of the board in respect of expenses incurred by them under this Act shall be audited in the same manner as if they were expenses incurred under the said Metropolis Local Management Acts, and the board shall in each year make a report to one of Her Majesty's principal secretaries of state of all acts done and expenditure incurred by them in pursuance of this Act, and that report shall be laid before parliament within one month after the commencement of the session.

Power to delegate powers of Board to a committee.

28. The board may delegate any powers conferred on them by this Act to a committee of their body; and such committee shall, to the extent to which such powers are delegated, be deemed to be the board within the meaning of this Act.

Establishment of salvage force by insurance offices.

29. If the companies insuring property within the metropolis, or any such number of them as may in the opinion of the said board be sufficient, establish a force of men charged with the duty of attending at fires and saving insured property, it shall be the duty of the fire brigade, with the sanction of the board, and subject to any regulations that may be made by the board, to afford the necessary assistance to that force in the performance of their duties, and, upon the application of any officer of that force, to hand over to their custody property that may be saved from fire; and no charge shall be made by the said board for the services thus rendered by the fire brigade.

Brigade when employed beyond the metropolis, or on special services.

30. It shall be lawful for the board, when occasion requires, to permit any part of the fire brigade establishment, with their engines, escapes, and other implements, to proceed beyond the limits of the metropolis for the purpose of extinguishing fires. In such case the owner and occupier of the property where the fire has occurred shall be jointly and severally liable to defray all the expenses that may be

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(*a*) See section 195 of Metropolis Management Act, 1855, *ante*, as to audit of accounts of metropolitan board, and the note to that section. The Metropolitan Board of Works (Loans) Act, 1869, section 31, enacts that the Board shall keep proper accounts, showing the appropriation of the moneys raised by the consolidated stock created under that Act for the purposes, amongst others, of this Act.

incurred by the fire brigade in attending the fire, and shall pay to the board a reasonable charge for the attendance of the fire brigade, and the use of their engines, escapes, and other implements. In case of difference between the board and the owner and occupier of such property, or either of them, the amount of the expenses, as well as the propriety of the fire brigade attending such fire (if the propriety thereof be disputed), shall be summarily determined by two justices. In default of payment, any expenses under this section may be recovered by the board in a summary manner.

The board may also permit any part of the fire brigade establishment to be employed on special services upon such terms of remuneration as the said board may think just.

Board to send information of fires to offices.

31. The metropolitan fire brigade shall in the morning of each day, with the exception of Sundays, send information, by post or otherwise, to all the insurance offices contributing for the purposes of this Act, of all fires which have taken place within the metropolis since the preceding return, in such form as may be agreed upon between the board and the said companies.

Transfer to Board of powers of parishes as to fire-plugs (*b*).

32. All the powers now exercised by any local body or officer within the metropolis as respects fire-plugs shall henceforth be exercised by the board, and the board shall be entitled to receive copies or extracts of all plans kept by any water company under the provision of the Act of the session of the fifteenth and sixteenth years of Her Majesty, chapter eighty-four; and every such water company shall provide at the expense of the board in any mains or pipes within the metropolis plugs for the supply of water in case of fire at such places, of such dimensions, and in such form as the board may require, and the fire brigade shall be at liberty to make such use thereof as they may deem necessary for the purpose of extinguishing any fire; and every such company shall deposit keys of all their fire-plugs at such places as may be appointed by the board, and the board may put up on any house or building a public notice in some conspicuous place in each street in which a fire-plug is situated, showing its situation.

Definition of "owner."

33. "Owner" in this Act shall mean the person for the time being receiving the rack-rent of the premises in connexion with which the word is used, either on his own account or as agent or trustee for some other person, or who would receive the same if the premises were let at rack-rent.

Repeal.

Partial repeal of unrepealed sections of 14 Geo. 3, c. 78 (*c*).

34. On and after the first day of January one thousand eight hundred and sixty-six there shall be repealed so much as is unrepealed of an Act passed in the fourteenth year of His late Majesty King George the Third, chapter seventy-eight, and intituled "An Act for the further and better regulation of buildings and party walls, and for the more effectually preventing mischief by fire, within the cities of London and Westminster and the liberties thereof, and other the

(*b*) By the Metropolitan Water Act, 1871, section 34, the operation of this section is made subject to the special provisions therein enumerated, extending the meaning of the term "plugs," as to expenses of providing plugs, and other matters. See the Act, *post*.

(*c*) This section is repealed by Statute Law Revision Act, 1875.

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parishes, precincts, and places within the weekly bills of mortality, the parishes of St. Marylebone, Paddington, St. Pancras, and St. Luke at Chelsea, in the county of Middlesex, and for indemnifying, under certain conditions, builders and other persons against the penalties to which they are or may be liable for erecting buildings within the limits aforesaid contrary to law," with the exception of sections eighty-three and eighty-six which shall remain in full force, but such repeal shall not affect any penalty or liability incurred under the repealed sections.

Partial repeal of 3 & 4 Will. 4, c. 90.

35. On and after the first day of January one thousand eight hundred and sixty-six section forty-four of an Act passed in the session holden in the third and fourth years of the reign of King William the Fourth, chapter ninety, shall be repealed so far as respects any parish or place within the limits of the metropolis as defined by this Act; Provided that the repeal of the said section shall not affect the power of the churchwardens and overseers of any parish or place to contribute to the funds of any society that at the time of the passing of this Act maintains fire escapes in such parish or place, unless and until the board purchases the property of such society, or otherwise provides fire escapes in such parish or place.

AN ACT

TO MAKE PROVISION FOR THE IMPROVEMENT, PROTECTION, AND MANAGEMENT OF COMMONS NEAR THE METROPOLIS.

29 & 30 VICT. CAP. 122.

10TH AUGUST, 1866.

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :

Short title.

1. This Act may be cited as the Metropolitan Commons Act, 1866 (*a*).

Definition of local authority

2. For the purposes of this Act the local authority in relation to each metropolitan common shall be the authority described as such in connexion therewith in the first schedule to this Act ; and for the

(*a*) This Act was amended by the Metropolitan Commons Amendment Act, 1869 (32 & 33 Vict. c. 107), and by the Metropolitan Commons Act, 1878 (41 & 42 Vict. c. 71), which see *post*. By Acts passed subsequently to this Act, schemes prepared by the inclosure commissioners under the provisions of this Act for the management of the following commons, &c., placing them under the jurisdiction of the Metropolitan Board of Works, were confirmed, viz., 34 & 35 Vict. c. 57 (Metropolitan Commons Supplemental Act, 1871) (Blackheath) ; 34 & 35 Vict. c. 63 (Metropolitan Commons Second Supplemental Act, 1871) (Shepherd's Bush Common) ; 35 & 36 Vict. c. 43 (Metropolitan Commons Supplemental Act, 1872) (Hackney Commons) ; 36 & 37 Vict. c. 86 (Metropolitan Commons Supplemental Act, 1873) (Tooting Beck Common) ; 40 & 41 Vict. c. 201 (Metropolitan Commons Supplemental Act, 1877) (Clapham Common). The 34 & 35 Vict. c. 77, confirms an arrangement between the board and the lord of the manor of Hampstead, for the purchase of the lord's rights over that manor, and by 34 & 35 Vict. c. 181, Wandsworth Common is vested in a body of conservators, of whom one is elected by the metropolitan board. See 37 Vict. c. 10, enabling the board to acquire possession of Leicester Square, and the 40 & 41 Vict. c. 35, empowering the board to acquire open spaces for the benefit of the public. It appears from the report of the Metropolitan Board of Works for the year 1877, p. 38, that the area of the parks, commons, and open spaces under the control of the board under various Acts was at the date of that report, 1,368¾ acres, and negotiations were pending for the preservation and management of other commons and lands, and the report contains detailed particulars as to the expenditure of the board for their maintenance and other matters.

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purposes of this Act the local rate in relation to each metropolitan common shall be the rate described in connexion therewith in the same schedule.

Interpretation of terms.

3. In this Act—

The term "common" (*a*) means land subject at the passing of this Act to any right of common; the term "commoner" means a person having any such right of common; the term "manor" includes reputed manor; and those terms as used in this Act respectively refer to any particular common to which this Act applies, and to every person having a right of common in, over, or affecting that common, and to the manor of the wastes whereof that common is part:

The term "the commissioners" means the inclosure commissioners for England and Wales, and the term "assistant commissioner" means the assistant commissioner appointed by the inclosure commissioners.

To what Commons Act applies.

4. This Act shall apply to any common the whole or any part whereof is situate within the metropolitan police district (*b*) as defined at the passing of this Act (referred to in this Act as a metropolitan common).

Exclusion of authority of commissioners to inclose, &c.

5. After the passing of this Act the commissioners shall not entertain an application for the inclosure of a metropolitan common, or any part thereof; but nothing in this Act shall interfere with the carrying on and completion of proceedings under any provisional order of the commissioners confirmed by Act of parliament passed before or in the present session; and notwithstanding any proceedings taken under any Act other than this Act, or any provisional order of the commissioners made but not already confirmed by Act of parliament, proceedings may be taken under this Act in relation to any metropolitan common.

Memorial for scheme as to common.

6. A scheme for the establishment of local management with a view to the expenditure of money on the drainage, levelling, and improvement of a metropolitan common, and to the making of bye-laws and regulations for the prevention of nuisances and the preservation of order thereon, may be made under this Act, on a memorial in that behalf presented to the commissioners by the lord of the manor or by any commoners, or by the local authority, or in case of a common extending into the districts of two or more of the bodies described in the first schedule to this Act, then by any one or more of such bodies (*c*).

(*a*) By the Metropolis Commons Amendment Act, 1869, s. 2, the following words are added to the interpretation of the word common: "and any land subject to be included under the provisions of the 8 & 9 Vict. c. 118."

(*b*) By the Corporation of London (Open Spaces) Act, 1878, the corporation of London may acquire by purchase, gift, or otherwise the freehold or interest in common lands not within the Metropolis Local Management Act, but within twenty-five miles of the city, and all rights over such common lands.

(*c*) In addition to the persons here mentioned the Metropolitan Commons Amendment Act, 1869, s. 3, provides that a scheme may be made under this Act on a memorial to the commissioners by any twelve or more ratepayers inhabitants of the parish or parishes in which the metropolitan common is situate.

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Inquiry into memorial (*d*).

7. On the presentation of any memorial under this Act the commissioners (if on consideration of the memorial they think fit) may make such examination and inquiry as they think necessary or proper in relation to the subject matter of the memorial.

Preparation of draft scheme.

8. On such examination and inquiry the commissioners may, if they think fit, prepare the draft of a scheme respecting the common or any part thereof.

Printing and publication of draft scheme.

9. Where the commissioners prepare the draft of a scheme, they shall cause it to be printed, and printed copies of it to be delivered to the memorialists and to the lord of the manor and to the local authority, and shall also cause it, or a proper abstract of it, to be published and circulated in such manner as they think sufficient for giving information to all parties interested.

Objections and suggestions respecting scheme.

10. During two months after the first publication of the draft of a scheme the commissioners shall receive any objections or suggestions made to them in writing respecting the scheme.

Inquiry into scheme by public sittings.

11. At any time after the expiration of those two months the commissioners, if they think fit, may refer the draft of the scheme to an assistant commissioner.

On any such reference the assistant commissioner shall proceed to make an inquiry concerning the subject matter of the scheme, and for that purpose to hold a sitting or sittings in some convenient place in the neighbourhood of the common, and thereat to take and receive any evidence and information offered, and hear and inquire into any objections or suggestions made or to be made during the sitting or sittings, respecting the scheme or the common, with power from time to time to adjourn any sitting.

Notice shall be published, in such manner as the commissioners direct, of every such sitting (except an adjourned sitting), fourteen days at least before the holding thereof.

Report of assistant commissioner.

12. The assistant commissioner to whom the draft of a scheme is referred shall make a report in writing to the commissioners setting forth the result of the inquiry, and whether in his opinion the draft of the scheme should be approved with or without alteration, and if with any, then with what alteration, and his reasons for the same, and the objects and suggestions, if any, made on the inquiry, and his opinion thereon.

Final settlement and approval of scheme.

13. As soon as may be after the expiration of the said two months, or the receipt by the commisssioners of the report of the assistant commissioner (as the case may be), the commissioners shall proceed to consider any objections or suggestions made to them in writing respecting the scheme, and the report (if any), and thereupon they shall, if they think fit, finally settle and approve of the scehme in such form as they think expedient.

(*d*) See bill to restrain the Metropolitan Board of Works from promoting a scheme for the management of a metropolitan common under this Act, inconsistent with a stipulation in a conveyance of the manor by the plaintiff; *Telford* v. *Metropolitan Board of Works*, L. R. 13 Eq. 574.

Section 14.

Scheme to state rights affected.

14. Every scheme shall state what rights (if any) claimed by any person or class of persons are affected by the scheme, and in what manner and to what extent they are affected thereby, and whether or not the scheme has been in relation thereto consented to by that person or class of persons, or any of them.

Provision for compensation.

15. No estate, interest, or right of a profitable or beneficial (*a*) nature in, over, or affecting a common shall, except with the consent of the person entitled thereto, be taken away or injuriously affected by any scheme, without compensation being made or provided for the same, and such compensation shall, in case of difference, be ascertained and provided in the same manner as if the same compensation were for the compulsory purchase and taking or the injurious affecting of lands under the provisions of the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860.

Appeal against determination of commissioners.

16. If any person claiming any estate, interest, or right in, over, or affecting the common to which any scheme relates is dissatisfied with any determination made or implied by the commissioners or by the scheme concerning any estate, interest, or right in, over, or affecting the common, every such person may obtain a decision thereon in an action at law in the manner provided by section fifty-six of the General Act to facilitate the inclosure and improvement of commons, passed in the session of the eighth and ninth years of the reign of Her present Majesty, chapter one hundred and eighteen.

8 & 9 Vict. c. 118, s. 56.

Printing and sale of scheme.

17. Every scheme shall contain a provision for the sale at all times of printed copies thereof to all persons desiring to buy the same, at a price not exceeding a reasonable sum to be fixed by the scheme.

Scheme when approved to be certified.

18. Every scheme, when approved by the commissioners, shall be certified by them, and sealed with their common seal.

Printing and publication of scheme.

19. Where the commissioners certify a scheme they shall cause printed copies of it to be delivered to the memorialists and to the lord of the manor and to the local authority, and shall also cause it, or a proper abstract of it, to be published and circulated in such manner as they think sufficient for giving information to all parties interested.

(*a*) The right of maintaining and repairing a sign post to a public house, which post had stood for forty years, is a beneficial right within this enactment, and a conviction for erecting a new one in lieu of one taken down under a bye-law of the Metropolitan Board of Works forbidding the erection upon the common of posts, &c., cannot be sustained; *Hoare* v. *Metropolitan Board of Works*, L. R. 9 Q. B. 296; 43 L. J. M. C. 95. In the case of *Attorney-General* v. *Tyssen-Amherst*, 'Times' April 2nd, 1879, it was held that the right of defendant (who was lord of the manor of Hackney) to dig gravel in Hackney Common, was not affected by the Metropolitan Commons Acts and Hackney Commons Scheme; and that if such beneficial right was interfered with, defendant would be entitled to compensation. A right to cut underwood growing on a common belonging to the lord of the manor, cannot exist by custom, prescription, or grant, unless it be a crown grant which incorporates the inhabitants; *Lord Rivers* v. *Adams*, L. R. 3 Ex. D. 361, and see *Chilton* v. *Corporation of London*, L. R. 7 Ch. D. 735.

Section 20.

Annual report to be laid before houses of parliament.

20. The commissioners shall in the month of February in every year make a separate report to Her Majesty of all their proceedings under this Act during the year ending the thirty-first day of December then last past.

The report shall be laid before both houses of parliament within fourteen days after the making thereof, if parliament is then sitting, and if not, then within fourteen days after the next meeting of parliament.

Contents of report.

21. The commissioners in such annual report shall set forth in full every scheme certified by them during the year to which the report relates, and shall state the grounds of their approval thereof, and the objections, if any, made thereto and overruled, and all proceedings had in respect of those objections, and the grounds on which they were overruled.

Confirmation of scheme by Act of parliament.

22. A scheme certified by the commissioners shall not of itself have any operation, but the same shall have full operation when and as confirmed by Act of parliament, with such modifications, if any, as to parliament seem fit.

Reference of scheme to select committee if opposed.

23. If in the progress through parliament of a bill confirming any scheme certified by the commissioners a petition is presented to either house of parliament against the scheme, the bill, as far as it relates to the scheme petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in case of a private bill.

Expenses of scheme to be defrayed by memorialists, &c.

24. All expenses incurred by the commissioners in relation to any memorial, or to any scheme consequent thereon, shall be defrayed by the memorialists, or by any ratepayers or inhabitants of the parish or district in or near to which the common is situate, or of the metropolis, willing and offering to defray those expenses, or by the local authority if willing and offering to defray the same; and the commissioners may, if they think fit, on or at any time after the presentation of the memorial, require the memorialists or those ratepayers or inhabitants, or any of them, or the local authority having offered as aforesaid (as the case may be), to pay to the commissioners such sum as the commissioners think requisite for or on account of those expenses, or to give security to the satisfaction of the commissioners for the payment of those expenses on demand.

Power for local authority to contribute for purposes of scheme.

25. The local authority may in relation to any metropolitan common for which they are the local authority, and the metropolitan board of works may in relation to any metropolitan common (although not one for which they are the local authority), contribute such amount as they think fit (in a gross sum or by annual payments or otherwise) towards the expenses of executing any scheme under this Act when confirmed by Act of parliament, including the payment of the compensation (if any) to be paid in pursuance thereof.

Expenses of local authority to be paid out of local rate.

26. All expenditure incurred by a local authority under this Act shall be defrayed by them out of the local rate, and all expenditure incurred by the metropolitan board of works under this Act, in cases where they are not the local authority, shall be defrayed by them out of the rate which in the first schedule to this Act is described as the local rate in connexion with the metropolitan board of works; and

Section 26. the amount requisite in that behalf respectively shall be raised by means of such respective rate accordingly.

Amendment of schemes.

27. The commissioners may from time to time approve and certify a scheme for amending any scheme confirmed by Act of parliament, and all the provisions of this Act relative to an original scheme shall apply also to an amending scheme, *mutatis mutandis*.

Provision for cases of disability.

28. Where any lord of a manor, commoner, or other person having any estate, interest, or right in, over, or affecting a common is under the disability of infancy, lunacy, or coverture, or other legal disability, or is beyond the seas, his or her guardian, trustee, committee of the estate, husband, or attorney (as the case requires), or in default thereof a person nominated in that behalf by the commissioners under their common seal (which nomination they are hereby empowered to make as occasion requires), shall for the purposes of this Act be deemed to be substituted in the place of such lord, commoner, or other person.

Consent with respect to crown or duchy rights.

29. Where any estate, interest, or right in, over, or affecting a common belongs to or is enjoyed by Her Majesty, her heirs or successors, in right of the crown, or forms part of the possessions of the Duchy of Lancaster or of the duchy of Cornwall, and consent for the purposes of any scheme under this Act may be given in respect of that estate, interest, or right as follows; namely,—

In the first-mentioned case, if the estate, interest, or right is under the management of the commissioners of Her Majesty's woods, forests, and land revenues, then by those commissioners or one of them, with the approval of the commissioners of Her Majesty's treasury; and if it is under the management of the commissioners of Her Majesty's works and public buildings, then by the last-mentioned commissioners, with the like approval:

In the secondly-mentioned case by the chancellor of the duchy of Lancaster, by writing under his hand attested by the clerk of the council of the duchy:

In the thirdly-mentioned case by the Duke of Cornwall, or other the persons for the time being empowered to dispose for any purpose of lands of the duchy of Cornwall.

Power for lord of manor, &c., to appoint agent.

30. Any lord of a manor, commoner, or other person having any estate, interest, or right in, over, or affecting a common may, by a power of attorney in writing under his hand (which shall be exempt from stamp duty), appoint an agent to Act for him for the purposes of any memorial or scheme under this Act.

All things by this Act directed or authorized to be done by or with relation to any lord of a manor, commoner, or other person as aforesaid may be lawfully done by or with relation to his agent so appointed.

Every such agent may, in the name and on behalf of his principal, sign, concur in, and execute any memorial or Act, or signify consent or dissent on any matter arising out of the execution of this Act.

Every person shall be bound by the Acts of any such agent according to the authority committed to him as fully as if the principal had himself acted.

Every such power of attorney, or a copy thereof examined and

authenticated as a true copy by the signature of a witness or witnesses, shall be deposited with the commissioners.

Any such power of attorney may be in the form given in the second schedule to this Act or to the like effect.

Provision for conveyance to commissioners. 9 Geo. 2, c. 36.

31. Where any estate, interest, or right in, over, or affecting a common is by deed conveyed for the purposes of a scheme under this Act, with the approval of the commissioners, the provisions of the Act of the ninth year of the reign of King George the Second (chapter thirty-six), "to restrain the disposition of lands whereby the same become unalienable," shall not apply to the conveyance.

Power for crown to vest manorial, &c., rights in commissioners.

32. Notwithstanding anything in any other Act, it shall be lawful for Her Majesty, her heirs or successors, from time to time, for the purposes of a scheme under this Act, to grant to any persons or body, for such estate or interest, and on such terms and subject to such conditions as to her Majesty, her heirs or successors, seem meet, all or any part or parts of the open and uninclosed lands being wastes of the royal manor, of East Greenwich in the county of Kent, and also to so grant all or any of the rights of common which Her Majesty, her heirs or successors, has or have for the time being in, over, or affecting any metropolitan common, and which might by law be so granted by a private person entitled absolutely thereto, and in every such case such persons or body, their heirs, successors, executors, or administrators, shall have full capacity to take and hold the same lands or rights.

Whenever it is the pleasure of Her Majesty, her heirs or successors, to make a grant as aforesaid, the Commissioners of Her Majesty's Treasury may issue a warrant to such persons or body.

Every such warrant shall be exempt from stamp duty, and shall be inrolled as conveyances of lands forming part of the land revenues of the Crown in England are required to be inrolled, and the inrolment thereof shall be certified at the foot or on the back thereof by the proper officer by whom the same is inrolled under his hand and the same when inrolled shall be returned with the certificate of inrolment to the grantees named in the warrant.

From and immediately after the inrolment of the warrant the grantees by force of this Act shall be deemed to be in the actual seisin or possession of the lands or rights in the warrant specified, and shall hold and enjoy the same, according to the warrant, for the purposes therein specified.

Schedule.

SCHEDULES.

THE FIRST SCHEDULE.

Description of Local Authority and Local Rate.

Metropolitan Common.	Local Authority.	Local Rate.
A metropolitan common the whole or any part whereof is situate within the metropolis as defined by The Metropolis Management Act, 1855.	The Metropolitan Board of Works.	The rate leviable for defraying the expenses of the board in the execution of The Metropolis Management Act, 1855, and the Acts amending the same.
A metropolitan common, the whole or any part whereof is situate within the district of a local board constituted under The Public Health Act, 1848, and The Local Government Act, 1858, or one of them, and no part whereof is situate within the metropolis as defined as aforesaid.	The local board -	The general district rate.
Any other metropolitan common.	The vestry of the parish in which the common or any part thereof is situate.	The poor rate.

THE SECOND SCHEDULE.

Form of Power of Attorney.

THE METROPOLITAN COMMONS ACT, 1866.

I, *A. B.* of in pursuance of the above-mentioned Act, appoint of to be my agent for all the purposes of that Act [*or for a specified purpose under the Act*].

Dated this day of , 18 .

(Signed) *A. B.*

Witness,
C. D.

AN ACT

TO EXTEND TO METROPOLITAN COMMONS CERTAIN PROVISIONS OF THE COMMONS ACT, 1876.

41 & 42 VICT. CAP. 71.

16TH AUGUST, 1878.

Section 1.

WHEREAS it is expedient to extend to the commons situate within the area prescribed by the Metropolitan Commons Act, 1866, certain provisions contained in the Commons Act, 1876 : 29 & 30 Vict. c. 122. 39 & 40 Vict. c. 56.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

Short title. 29 & 30 Vict. c. 122. 32 & 33 Vict. c. 107.

1. This Act shall be cited as the Metropolitan Commons Act, 1878, and shall be read as forming one Act with the Metropolitan Commons Acts, 1866 and 1869.

Power to metropolitan board to acquire and hold common rights. 18 & 19 Vict. c. 120. 39 & 40 Vict. c. 56.

2. The metropolitan board of works shall, in respect of any common situate within the metropolis as defined by the Metropolis Management Act, 1855 (*a*), have the same power to purchase and hold, with a view to prevent the extinction of the rights of common, any saleable rights in common, or any tenement of a commoner having annexed thereto rights of common, as is conferred by the fifth paragraph in the eighth section of the Commons Act, 1876, upon an urban sanitary authority in respect of a suburban common (*b*).

Extension of

3. Sections thirty (*c*) and thirty-one (*d*) of the Commons Act, 1876,

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(*a*) See interpretation of the term "metropolis" in the 250th section of the 18 & 19 Vict. c. 120, and note (*b*) to Preamble of that Act.

(*b*) The 8th section of the 39 & 40 Vict. c. 56, applies to commons referred to in that Act as suburban commons; and the fifth paragraph is to the following effect: "They may also, in the case of any such suburban common, purchase and hold as aforesaid, with a view to prevent the extinction of the rights of commoners, any saleable rights in common, or any tenement of a commoner having annexed thereto rights of common."

(*c*) Empowering the county court to hear any case relating to any illegal enclosure or encroachment of or upon such common made after the passing

Section 3. shall after the passing of this Act, apply to metropolitan commons within the meaning of the Metropolitan Commons Acts of 1866 and 1869.

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certain provisions of 39 & 40 Vict. c. 57 to metropolitan commons. 29 & 30 Vict. c. 122. 32 & 33 Vict. c. 107.

of that Act, or to any nuisance impeding the exercise of any right of common arising after the passing of that Act; and to grant an injunction or make an order for removal or abatement of such enclosure, encroachment, or nuisance. The enactment gives power to any person aggrieved by any injunction, &c., to appeal to the High Court of Justice in manner therein directed, on giving security for costs.

(*d*) Providing that any person intending to enclose or approve a common or part of a common, otherwise than under the provisions of that Act, shall give notice as therein directed, to all persons claiming any legal right in such common or part of a common.

AN ACT

FOR THE PROTECTION OF CERTAIN GARDEN OR ORNAMENTAL GROUNDS IN CITIES AND BOROUGHS.

26 VICT. CAP. 13.

4TH MAY, 1863.

Section 1.

WHEREAS it is expedient to make provision for the better protection and charge of enclosed garden or ornamental grounds which have been set apart (*a*) for the use of the inhabitants of any public square, crescent, circus, street, or other public place surrounding or adjoining such gardens or grounds in any city or borough: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Gardens in certain squares, &c., may be freed from neglect, encroachments, &c., and vested in the metropolitan board of works or other corporate authority (*b*);

1. Where in any city or borough any enclosed garden or ornamental ground has been set apart (*a*) otherwise than by the revocable permission of the owner thereof in any public square, crescent, circus, street, or other public place, for the use or enjoyment of the inhabitants thereof, and where the trustees, commissioners, or other body appointed for the care of the same have neglected to keep it in proper order, or where such garden or ground has not been vested in or placed under the management of any trustees, commissioners, or other body for the care of the same, and from the want of such care, or from any other cause, has been neglected, the metropolitan board of works, where the same is in any place under their jurisdiction, except the city of London (where the provisions of this Act shall be carried into effect by the corporation of the said city), and the corporate

(*a*) The object of the Act was to provide for squares and gardens already set apart for the use of the inhabitants, and not to interfere with the rights of owners of land not so set apart; *Tulk* v. *Metropolitan Board of Works*, 8 B & S. 777. The Leicester Square Act, 1874, vests in the Metropolitan Board of Works the garden or enclosure, Leicester Square, with provisions, giving powers for its management for making bye-laws, &c.; and 40 & 41 Vict. c. 35, Open Spaces (Metropolis) Act, *post*, enables the metropolitan board to acquire the control and management of open spaces in and near the metropolis.

(*b*) The Metropolis Management Act, 1855, contained special provisions with respect to any enclosed gardens or ornamental grounds vested in or under the management of any commissioners or other bodies for the use of the inhabitants of any square, crescent, circus, street, or place, surrounding or adjoining such garden or ground; and see 40 & 41 Vict. c. 35 (Open Spaces).

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authorities in any other city or borough, shall take charge of the same, putting up a notice or notices to that effect in such garden or ornamental ground, and if after due inquiry the person entitled to any estate of freehold in the same cannot be found, or if it shall be vested in any person by whom it is held, subject to any condition or reservation for keeping the same as and for a garden or pleasure ground, or that the same shall not be built upon, but not otherwise, shall cause any building or other encroachment made therein within the period of twenty years before the passing of this Act to be removed, and (if requested by a majority of two-thirds of the owners and of the occupiers of the houses surrounding the same) shall vest such garden or ornamental ground in a committee consisting of not more than nine nor fewer than three of the rated inhabitants of such houses to be chosen annually by such inhabitants, in order that the same may be kept as a garden or ornamental ground for the use of such inhabitants; and the vestry or board of any and every parish or district within which the same or any part thereof is situate shall from time to time cause to be raised the sums required by such committee for defraying the expenses of the maintenance and management (*a*) of such enclosed garden or ornamental ground, or of such part thereof as is situate within their parish or district, by an addition to the general rate to be assessed on the occupiers of such houses; or if the said owners and occupiers shall not agree as aforesaid to undertake the charge of such garden or ornamental ground, the metropolitan board of works or corporate authority aforesaid shall, within six months after the notice hereinbefore mentioned shall have been put up within the same, or within such further time as the said board or authority may think it expedient to allow for such agreement to be come to, vest the same in such vestries or boards, who shall thenceforth take charge of and maintain the same as an open place or street in such manner as shall appear to them most advantageous to the public, subject to the approval of the metropolitan board of works or corporate authority, as the case may require; saving and always reserving to every person and persons, his and their heirs, executors, administrators, and assigns, all such estate, right, title, and interest as he, she, or they would or ought to have had and enjoyed of, in, to, from, or out of the gardens and grounds aforesaid in case this Act had not passed.

or vested in a committee of rated inhabitants.

Protection of open spaces from encroachment.

2. And whereas it is expedient that the same should be carefully protected from undue encroachment, where any right to require that any garden or ornamental ground as aforesaid be kept and maintained as such, or that the same shall not be built upon, shall belong to any person in right of any house or other property, and he shall by notice in writing signed by him addressed to the metropolitan board of works where the same is in any place under their jurisdiction, except the city of London, where the same shall be addressed to the corporation of the said city, or to the corporate authorities in any other city or borough, requesting the said metropolitan board of works or corporate authority to protect the right before mentioned, the said metropolitan board of works or corporate authority, after due inquiry, may, if they shall think fit, accede to such request, and then

(*a*) See what is within the powers of a municipal corporation as a local board of health, as regards additions to public gardens as conducive to the better enjoyment of the walks and grounds; *Attorney-General* v. *Corporation of Sunderland*, L. R. 2 Ch. D. 634.

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and thereupon the right of such person to require that such garden or ornamental ground to be maintained as such, or that the same shall not be built upon, shall thenceforth be vested in such metropolitan board of works or corporate authority, who shall be fully empowered, for and in their own name, to exercise all the rights, powers, and privileges in relation thereto, and take such legal proceedings for asserting, defending, and protecting the same, as the said person might have exercised or taken.

Expenses how to be defrayed.

3. Any charge incurred by the metropolitan board of works in the execution of this Act shall be deemed to be expenses of the said board for payment whereof provision is made by the Act for the better local management of the metropolis; and the expenses incurred by any corporate authority shall be deemed to be expenses necessarily incurred by them in carrying into execution within and for their city or borough the Act intituled "An Act to Provide for the Regulation of Municipal Corporations in England and Wales," and any other Act amending the same.

5 & 6 Will. 4, c. 76.

Bye-laws for management of garden, &c.

4. Where any such garden or ground is managed by any committee of the inhabitants of any square, crescent, circus, street, or place, such committee may make, and from time to time revoke and alter bye-laws for the management of the same, and for the preservation of the trees, shrubs, plants, flowers, rails, fences, seats, summer-houses, and other things therein, which bye-laws shall be entered in a book kept for that purpose by the committee, signed by the chairman of the meeting at which the same shall be passed, and which book shall and may be produced and read, and taken as evidence of such bye-laws, in all courts whatever, and any inhabitant or servant, or other person admitted to such garden by any inhabitant, offending against the same, after they shall have been duly allowed, as hereinafter provided, upon proof thereof before a magistrate acting for the district in which such garden is situate, shall be liable for each offence to a penalty not exceeding five pounds: Provided always, that such bye-laws shall not come into operation until the same shall have been allowed by some judge of one of the superior courts, or by the justices in quarter session; and it shall be incumbent on such judge or justices, on the request of such committee, to inquire into any bye-laws tendered to them for that purpose, and to allow or disallow the same as they think meet.

Penalty for injuring garden.

5. Any police constable who shall see any person throwing any rubbish into any such garden, or trespassing therein, or getting over the railings or fence, or stealing or damaging the flowers or plants, or committing any nuisance therein, may apprehend such person, under the authority hereby given to him; and any person convicted before any magistrate acting for the district shall be liable for each and every offence aforesaid to a penalty not exceeding forty shillings, or to imprisonment for any period not exceeding fourteen days; and in case it shall be necessary to state in any proceedings the ownership of the property of such garden, flowers, or plants, it shall be sufficient to describe the same as the property of the committee by the name of *A. B.* and others.

Certain provisions of 18 & 19 Vict. c. 120, to be

6. The provisions contained in the two hundred and twenty-fifth, two hundred and twenty-sixth, two hundred and twenty-seventh, and two hundred and twenty-eighth sections of the Act passed in the session of parliament held in the eighteenth and nineteenth years of

Section 6. incorporated with this Act, and to apply to penalties, &c., imposed by this Act. 11 & 12 Vict. c. 43, also to apply.

the reign of Her most Gracious Majesty the Queen, chapter one hundeed and twenty, shall be incorporated in this Act, and shall apply to any penalty or forfeiture imposed by this Act, or any bye-law made in pursuance thereof, in and for every matter or thing done or omitted to be done within the metropolitan district; and the Act passed in the twelfth year of the reign of Her Majesty the Queen, chapter forty-three, shall apply to every penalty or forfeiture imposed by this Act, or any bye-law made in pursuance thereof, for any matter or thing done or omitted to be done within any other part of England and Wales (*a*).

Act not to extend to property of the crown or to property under the management of the commissioners of works, &c.

7. Nothing in this Act shall extend to or include any garden, ornamental ground, or other land belonging to Her Majesty in right of her crown or of her Duchy of Lancaster, or any garden, ornamental grounds, or other land for the time being under the management of the commissioners for the time being of Her Majesty's works and public buildings, or of the commissioners for the time being acting under the Crown Estate Paving Act, 1851, or to any garden, ornamental or other ground for which special provision is made for the due care and protection thereof by any public or private Act of parliament.

Extent of Act.

8. Nothing in this Act shall extend to Scotland or Ireland.

(*a*) As to application of penalties, see 105th section of Metropolis Management Amendment Act, 1862, and note.

AN ACT

FOR AFFORDING FACILITIES FOR THE ENJOYMENT BY THE PUBLIC OF OPEN SPACES IN THE METROPOLIS (*a*).

40 & 41 VICT. CAP. 35.

2ND AUGUST, 1877.

Section 1.

WHEREAS it is expedient to afford facilities for making available the open spaces in and near the metropolis for the use of the inhabitants for exercise and recreation, and to enable the metropolitan board of works to acquire the control and management of such open spaces for such purposes.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

Metropolitan board of works may acquire and hold open spaces for benefit of public (*b*).

1. The metropolitan board of works may, by purchase or voluntary sale, or by the gift of the person or persons legally entitled to dispose of the same, acquire or accept the ownership of any open spaces, whether inclosed within rails or pailings, or uninclosed, situated in the metropolis, and hold the same in trust for the perpetual use, thereof by the public for exercise and recreation, and may from time to time make bye-laws for the regulation of such open spaces and may by such bye-laws provide for the removal of any person infringing any such bye-law by any officer of the said board or police constable. Bye-laws under this section shall be made in the same manner and subject to the same conditions as bye-laws made by the said board under the Metropolis Management Act, 1855. 18 & 19 Vict. c. 120.

Right of entry to places of recreation may be conveyed to

2. Where any open spaces now are or hereafter may be used as places of exercise and recreation for the inhabitants of certain houses, and the property and right of user is now or hereafter may be vested in one or more persons as owners or occupiers of such houses, such owners and occupiers (if any) may convey to the metropolitan board

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(*a*) See note to section 1 of Metropolitan Commons Act, *ante*, as to number and acreage of the parks, commons, and open spaces, under the control of the board.

(*b*) See as to what is within the powers of a municipal corporation as a local board of health, as regards additions to public gardens as conducive to the better enjoyment of walks and grounds; *Attorney-General* v. *Corporation of Sunderland*, L. R. 2 Ch. D. 634.

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metropolitan board of works.

of works, in trust for the public, the right to enter upon and use and enjoy such open spaces, subject to such terms and conditions as may be agreed upon.

Provisions for keeping up open spaces.

3. The metropolitan board of works shall be entitled to make such provision as may be necessary for maintaining and protecting the open spaces so acquired by them. (*a*)

Expenses 18 & 19 Vict. c. 120.

4. The metropolitan board of works shall be empowered to pay out of the funds at their disposal or which they are empowered to raise under the said Metropolis Management Act, 1855, and the several Acts amending the same, the costs and charges which they may incur in the execution of this Act, and such costs and charges shall be deemed to be expenses for which provision is made by such Act.

Extent of Act.

5. This Act shall not extend to the royal parks, nor to any land belonging to Her Majesty in right of her crown or of her Duchy of Lancaster, or any garden, ornamental ground, or ornamental land for the time being under the management of the commissioners for the time being of Her Majesty's works and public buildings or of the commissioners for the time being acting under the Crown Estate Paving Act, 1851, or to any metropolitan common within the meaning of "The Metropolitan Commons Act, 1866," and "The Metropolitan Commons Amendment Act, 1869," nor to any land belonging to either of the honourable societies of the Inner Temple and Middle Temple.

14 & 15 Vict. c. 95.
29 & 30 Vict. c. 122.
32 & 33 Vict. c. 107.

Meaning of term "metropolis."

6. The term "metropolis" in this Act means all parishes and places mentioned in Schedules A., B., and C., to the said Metropolis Management Act, 1855.

In the city of London the powers of the Act to be executed by the corporation.

7. The powers in this Act conferred on the metropolitan board of works shall in the city of London be exercised by the mayor, aldermen, and commons of the said city, who shall defray all the expenses caused by or connected with the execution of such powers.

Short title.

8. This Act may be cited as the Metropolitan Open Spaces Act, 1877.

(*a*) The metropolitan board have made bye-laws for parks, gardens, and open spaces, under powers conferred by the Metropolitan Board of Works Act, 1877, Metropolitan Commons Supplemental Act, 1877, and Plumstead Common Act, 1878.

AN ACT

TO REGULATE AND OTHERWISE DEAL WITH SLAUGHTER HOUSES AND CERTAIN OTHER BUSINESSES IN THE METROPOLIS. (*b*)

37 & 38 VICT. CAP. 67.

7TH AUGUST, 1874.

Section 1.

WHEREAS it is expedient to amend the law in the metropolis relating to slaughter-houses and certain other businesses hereinafter specified :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

Preliminary.

Short title of Act.

1. This Act may be cited for all purposes as the Slaughter-houses, &c. (Metropolis) Act, 1874.

Regulations as to Businesses.

Absolute prohibition against establishing anew certain businesses.

2. If any person establishes anew (*c*) within the limits of this Act the following businesses or any of them ; that is to say, the business of—

Blood boiler, or	Bone boiler, or
Manure manufacturer (*d*), or	Soap boiler, or
Tallow melter, or	Knacker,

(*b*) The 131st section of the Metropolis Management Act, 1855, relative to the licensing of slaughter-houses in the metropolis, and the 35th section of the Metropolitan Market Act, 1857, were repealed by the 92nd section of the Metropolis Amendment Act, 1862, and see substituted provisions in the 93rd and following sections of that Act. Refer to the amended provisions in section 10 of this Act, as to the granting of licenses in special sessions, notice to the Metropolitan Board of Works, as well as to the parties named in the 93rd section of the Metropolis Management Act, 1862, and notice to applicant of intended objections to renewal of license.

(*c*) See section 13, *post*, as to when a business shall be deemed to be established anew.

(*d*) See *Cardell* v. *New Quay Local Board*, 39 J. P. 742, where it was held that the manufacture of manure was not in itself a noxious and offensive business, and no penalty was inflicted. See section 17, *infra*, providing that nothing in the Act shall affect the general law of nuisance, &c.

Section 2.

he shall incur a penalty not exceeding fifty pounds in respect of the establishment thereof, and any person carrying on the same when established shall incur a penalty (*a*) not exceeding fifty pounds for every day during which he so carries on the same.

Certain businesses may be established anew with sanction of local authority.

3. If any person establishes anew within the limits of this Act, without the sanction of the local authority (*b*), the following businesses or any of them; that is to say, the business of—

Fellmonger, or
Tripe boiler, or
Slaughterer of cattle (*c*), or
Any other business which the local authority may declare by order confirmed by the local government board and published in the London Gazette to be an offensive business (*d*),

he shall incur a penalty not exceeding fifty pounds in respect of the establishment thereof, and any person carrying on the same when established shall incur a penalty not exceeding fifty pounds for every day during which he so carries on the same.

The sanction of the local authority shall be given by order certified under their seal, or under the hand of their clerk, but previously to making any such order, the local authority shall give notice thereof to the vestry of the parish within which the premises are situate at least fourteen days before such application is considered, and also give notice by advertisement of the time and place at which they will be willing to hear all persons objecting to such order, and shall take into their consideration any objections made at such time and place, and shall grant or withhold such sanction as they may think expedient.

Power of local

4. The local authority may from time to time make, alter, and repeal bye-laws for regulating the conduct of any businesses specified

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(*a*) As to recovery of penalties, see section 5.

(*b*) See section 12, *infra*, as to definition of "local authority" in parishes included in schedules A., B., and C. to Metropolis Management Act, 1855, and in the City of London respectively.

(*c*) See definition of "slaughterer of cattle," section 12, *infra*; and see exemption as regards the Metropolitan Cattle Market, and Cattle Market of Deptford, section 16. The Public Health Act, 1848, section 64, provided that the business of a slaughterer of cattle, &c., should not be newly established in any building without the consent of the Local Board of Health, and after the Act had been applied to a district, a cattle market company erecting a building, in which they permitted parties to slaughter cattle in consideration of a payment, the company finding the tackle to the building, were held liable to a penalty under section 64; *Liverpool New Cattle Market Company* v. *Hodson*, L. R., 2 Q. B. 131.

(*d*) In *Wanstead Local Board of Health* v. *Hill*, 13 C. B. (N.S.) 479, it was held that brickmaking was not of itself a noxious or offensive business within the meaning of section 164 of Public Health Act, 1848. See the provisions in section 27 of the Nuisances Removal Act for England, 1855, with respect to a nuisance arising from any candle house, melting house, melting place or soap house, or any slaughter house, or any building or place for boiling offal or blood, or for boiling, burning, or crushing bones, or any manufactory, building, or place used for any trade, business, process, or manufacture causing effluvia, and proceedings thereon by vestries and district boards, with the power given to those bodies by the Public Health Act, 1875, section 114, with respect to similar nuisances on premises out of their district.

in this Act, which are for the time being lawfully carried on within their jurisdiction, and the structure of the premises on which such business is being carried on, and the mode in which application is to be made to the local authority for their sanction to establish anew any business under this Act :

authority to make bye-laws.

Pecuniary penalties (to be recovered before a court of summary jurisdiction) (*e*) may be imposed by any such bye-laws on persons breaking any bye-law regulating the conduct of any of the said businesses, provided that no penalty exceeds for any one offence the sum of five pounds, or in the case of a continuing offence, the sum of one pound for every day during which such offence is continued after conviction for the first offence.

Also power may be given by any such bye-law as last aforesaid to a court of summary jurisdiction by summary order (*f*) to suspend or deprive any person altogether of the right of carrying on any business to which such bye-law relates as a penalty for breaking the same.

Any bye-law made in pursuance of this section, and any alteration made therein, and any repeal of a bye-law, shall not be of any validity until it has been confirmed by the local government board.

A bye-law made under this Act shall not nor shall any alteration therein or repeal thereof be confirmed by the local government board until the expiration of one month after notice of the intention to apply for confirmation of the same has been given by the local authority in one or more newspapers circulating in the metropolis ; and any vestry or district board or person aggrieved by any such proposed bye-law or alteration in or repeal of a bye-law may forward notice of his objection to the local government board, who shall take the same into consideration.

If for a period of four months after the passing of this Act the local authority fail in exercising the powers of making bye-laws given by this Act, the local government board may, by order, to be published in such manner as that board may direct, make such bye-laws of their own motion, and may by a like order alter and repeal such bye-laws and make other bye-laws in lieu thereof ; and all bye-laws so made shall have the same effect and may be enforced in like manner as bye-laws made by the local authority and duly confirmed by the local government board.

Legal Proceedings and Miscellaneous.

Legal proceedings.

5. All offences and penalties under this Act, or any bye-law made in pursuance of this Act, may be prosecuted and recovered before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Act.

The term "the Summary Jurisdiction Act," means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "an Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," inclusive of any Acts amending the same :

(*e*) See next section as to meaning of term "court of summary jurisdiction."

(*f*) See section 5 as to penalties in case of disobedience to summary order, and as to appeal, section 6.

Section 5.

The term "court of summary jurisdiction" means and includes any justice or justices of the peace, Lord Mayor or alderman of the city of London, or metropolitan police magistrate.

The court of summary jurisdiction, when hearing and determining an information or complaint under this Act, shall be constituted in some one of the following manners; that is to say, either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of one of the magistrates hereinafter mentioned sitting alone or with others at some court or other place appointed for the administration of justice, that is to say, the Lord Mayor, or any alderman of the city of London, or a metropolitan police magistrate.

Any person disobeying any summary order (*a*) of a court of summary jurisdiction made in pursuance of this Act shall incur a penalty not exceeding fifty pounds for every day during which disobedience continues.

Appeal to quarter sessions.

6. If any party feels aggrieved by any order or conviction made by a court of summary jurisdiction under or in pursuance of this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:

(1.) The appeal shall be made to some court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision of the court from which the appeal is made:

(2.) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and of the ground thereof:

(3.) The appellant shall, immediately after such notice, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice may allow:

(4.) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.

Bye-laws to be printed.

7. All bye-laws made by the local authority under this Act shall be printed, and a copy thereof shall be delivered to any person carrying on any of the businesses specified in this Act within the limits of this Act, upon his application for the same, without payment of any fee, and to any other person, on payment of such sum, not exceeding one shilling, as the local authority may from time to time prescribe.

Evidence of bye-laws.

8. Any bye-law or order made by the local authority in pursuance of this Act may be proved by the production of a printed copy of such

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(*a*) See section 4, *supra*, as to "summary order."

bye-law or order purporting to be certified by the clerk of the local authority to be a true copy, or purporting to be sealed by the seal of the local authority; and any such bye-law or order shall, until the contrary is proved, be deemed to have been duly made and confirmed in pursuance of this Act.

Fees for sanction of local authority.

9. There shall be charged for an order sanctioning the establishment anew of any one of the said businesses, permitted to be established anew, such fee not exceeding ten shillings as the local authority may prescribe.

Any such fees shall be carried to such account for the benefit of the local authority as that authority may prescribe, and shall be applicable to the purposes for which the local rate (*b*) is applicable.

Amendment of law as to renewal of licenses for slaughter-houses in special session under Metropolis Management Amendment Act, 1862 (*c*).

10. Where the sanction of the local authority has been given under this Act to a slaughterer of cattle to establish his business anew on any premises within the limits of this Act, a license to use such premises as a slaughter-house shall be granted as a matter of course by the justices assembled at the first special sessions for licensing slaughter-houses held after the grant of such sanction, in pursuance of section ninety-three of the Metropolis Management Amendment Act, 1862 (*d*).

Before any license by the justices assembled at special sessions for the use of any premises as a slaughter-house is renewed under the last-mentioned section, fourteen days previous notice of the intention to apply for such license to be renewed shall be served on the metropolitan board of works as well as on the other parties in the said section in that behalf mentioned, to the intent that such board may, if they think fit, show cause against such license being renewed, in like manner as such other parties are empowered by that section to show cause.

An objection shall not be entertained to a license under the said section for the use of any premises as a slaughter-house being renewed unless seven days previous notice has been served on the applicant of the intention of the objector to bring forward such objection, with this exception, that notwithstanding notice has not been given, the justices may, if they think it just so to do, on an objection being made, and notice of such objection being served on the applicant, adjourn the question as to renewing any license to a future day, and require the attendance of the holder of the license on such day, when the case shall be heard and the objection considered as if the notice hereinbefore directed had been given.

A license under the said section ninety-three for the use of premises as a slaughter-house shall, for the purposes of this Act, be deemed to be renewed in all cases where a further license is granted under the said section in immediate succession to a prior license being granted for the use of the same premises as a slaughter-house

Power of inspectors of privy council

11. Any person for the time being appointed by the Privy Council an inspector for the purposes of the Contagious Diseases (Animals)

(*b*) See definition of "local rate," section 12, *infra*.

(*c*) See exemption in favour of Metropolitan Cattle Market and Deptford Cattle Market, section 16.

(*d*) See reference to this enactment in note (*a*), p. 363, *supra*.

Section 11.

to enter slaughter-houses and knackers yards for detection of disease.

Act, 1869 (a) may enter on the premises occupied by any slaughterer of cattle or knacker, within the limits of this Act, and inspect any live or dead animals therein for the purpose of detecting the presence of any contagious or infectious disease, and any person obstructing any such inspector in entering such premises or placing any obstacle in the way of his making such inspection as aforesaid, shall incur a penalty not exceeding twenty pounds.

Definitions.

Definitions.

12. In this Act, if not inconsistent with the context, the following expressions shall have the meanings hereinafter respectively assigned to them ; that is to say,

"The metropolis" means the parishes and places mentioned in the schedules (A.), (B.), and (C.), annexed to the Metropolis Management Act, 1855, and any parish to which such Act may be extended by order in council in manner in the said Act provided ; also the city of London and the liberties of the said city :

"The local authority" means, as respects the parishes and places mentioned in the schedules (A.), (B.), and (C.), annexed to the Metropolis Management Act, 1855, and any parish to which such Act may be extended by order in council in manner in the said Act provided, the metropolitan board of works, and as respects the city of London and the liberties thereof, the commissioners of sewers :

"The clerk of the local authority" means as respects the metropolis "the clerk of the metropolitan board of works," and as respects the city of London, "the chief clerk of the commissioners of sewers :"

"The limits of this Act" means the area of the metropolis as hereinbefore defined :

"The local rate" means, as respects the metropolis, "the rate or fund applicable to the payment of the general expenses of the metropolitan board of works ;" as respects the city of London, the "consolidated sewer rate :"

"Slaughterer of cattle" means a person whose business it is to kill any description of cattle, including sheep, goats, or swine, which is killed for the purpose of its flesh being used as butchers meat :

"Knacker" means a person whose business it is to slaughter any horse, ass, or mule, or any cattle, sheep, goat, or swine which is not killed for the purpose of its flesh being used as butchers meat.

When a business to be deemed

13. A business shall be deemed to be established anew if it is removed from any one set of premises to any other premises, or if it is renewed on the same set of premises after having been discontinued

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(a) The Act here named is, with certain exceptions, repealed by the Contagious Diseases (Animals) Act, 1878, section 4, first schedule. The general powers of inspectors under the Act, are defined by the 51st section, and section 5, after defining the terms "inspector of the privy council" and "inspector of a local authority," declares that "inspector" used alone, shall mean a person appointed to be an inspector for the purposes of the Act.

Section 13.

for a period of nine months or upwards, or if any premises on which it is for the time being carried on are enlarged without the sanction of the local authority; but a business shall not be deemed to be established anew by reason only that the ownership of such premises is wholly or partially changed, or by reason only that the building on which it is established having been wholly or partially pulled down or burnt down has been reconstructed without any extension of its area. established anew.

Repeal and Saving Clauses.

14. There shall be repealed the following enactments; that is to say, Repeal of Acts.

(1.) Sections 55 and 56 (*b*) of the Act of the session of the seventh and eight years of the reign of Her present Majesty, chapter eighty-four, and intituled "An Act for Regulating the Construction and use of Buildings in the Metropolis and its Neighbourhood," so far as relates to the several businesses of a soap boiler, tallow melter, knacker, fellmonger, tripe boiler, or slaughterer of cattle.

Provided that the repeal enacted in this Act shall not affect—

(1.) Anything duly done or suffered under any enactment hereby repealed; or

(2.) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence against any enactment hereby repealed; or

(3.) The institution of any investigation or legal proceeding or any other remedy for ascertaining, enforcing, or recovering any such liability, penalty, forfeiture, or punishment as aforesaid.

15. All bye-laws and regulations in force at the time of the passing of this Act, in relation to any of the businesses, for the regulation of which a power of making bye-laws is given by this Act, shall continue in force until repealed by bye-laws made in pursuance of this Act, power being given to repeal, in relation to any such last-mentioned business, by bye-law made in pursuance of this Act, any bye-law or regulation in force in relation to such business at the time of the passing of this Act. But from and after the passing of this Act the local authority shall not have power to make any bye-laws or regulations in respect of any business which they are empowered to regulate by bye-law under this Act except by bye-law made in pursuance of this Act. Continuance of bye-laws.

16. Nothing in this Act shall render it necessary for the mayor, aldermen, and commons of the city of London, or their tenants, to Exemption regarding the metropolitan

(*b*) The sections here mentioned were included among the enactments excepted from the repeal of former Acts, by the 109th section of the Metropolitan Building Act, 1855. The 55th section contains provisions respecting the businesses of blood boiler, bone boiler, fellmonger, slaughterer of cattle, sheep, or horses, soap boiler, tallow melter, and tripe boiler, imposing penalties in certain cases; and the 56th section relates to the infliction of penalties, &c. See note to section 109 of Metropolitan Building Act, 1855. *ante.*

Section 16. cattle market, &c.

make application to the local authority for an order to enable them to slaughter cattle at the metropolitan cattle market, or at the cattle market at Deptford, or enable the local authority to make bye-laws affecting those markets or the slaughter-houses now erected or that may be erected at either of these markets.

Saving.

17. Nothing in this Act contained shall affect the general law of nuisance, or make legal any act or default which would have been illegal if this Act had not passed, or, save as in this Act expressly provided, affect any Act of parliament relating to any business specified in this Act.

AN ACT

TO MAKE BETTER PROVISION RESPECTING THE SUPPLY OF WATER TO THE METROPOLIS (*a*).

15 & 16 VICT. CAP. 84.

1ST JULY, 1852.

WHEREAS it is expedient to make provision for securing the supply to the metropolis of pure and wholesome water, and otherwise to make further and better provision in relation to the water supply of the metropolis: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :—

Restriction of to sources supply of water to the metropolis (*b*).

1. From and after the thirty-first day of August one thousand eight hundred and fifty-five it shall not be lawful for any company supplying the metropolis or any part thereof with water for domestic use, except the governor and company of Chelsea Waterworks, to take any water for such purpose from any part of the river Thames below Teddington Lock, or from any part of any of the tributary rivers or streams of the river Thames below the highest point where the tide flows in such tributary rivers and streams respectively; and from and after the thirty-first day of August one thousand eight hundred and fifty-six, it shall not be lawful for the said governor and company of Chelsea Waterworks to take any water for domestic use from any part of the river Thames below Teddington Lock.

Reservoirs within a limited dis-

2. From and after the thirty-first day of August one thousand eight hundred and fifty-five every reservoir within a distance in a

(*a*) This Act was amended by the Metropolis Water Act, 1871, 34 & 35 Vict. c. 113, which requires the companies enumerated in it to give a constant supply of pure and wholesome water sufficient for the domestic purposes of the inhabitants within the water limits mentioned in the Act, at the pressure described, subject to the conditions specified. See the Act, *post*.

(*b*) This section is in part repealed by the Statute Law Revision Act, 1875, namely, to "and fifty-five," the words "except the governor and company of Chelsea Waterworks," and from "and from and" to the end of the section.

Section 2. tance to be covered (*a*).

not more than five miles, in which water for the supply for domestic use of the metropolis or any part thereof is stored or kept by any company, shall be roofed in or otherwise covered over: Provided always that this provision shall not extend to any reservoir the water from which is subjected by the company to efficient filtration after it is discharged from such reservoir, and before it is passed into the mains or pipes of the company for distribution, or to any reservoir the whole of the water from which is distributed through distinct mains or pipes for other than domestic purposes, nor to any reservoir whatever the water stored in which shall be used exclusively for other than domestic purposes.

Water not to be brought within a limited distance in open aqueducts (*b*).

3. From and after the thirty-first day of December one thousand eight hundred and fifty-five, no water shall be brought or conducted within the metropolis by any company for the purpose of domestic use otherwise than through pipes or through covered aqueducts, unless the same shall be afterwards filtered before distribution.

Every company to filter all water supplied by them for domestic use.

4. From and after the thirty-first day of December one thousand eight hundred and fifty-five, every company shall effectually filter all water supplied by them within the metropolis for domestic use, before the same shall pass into the pipes for distribution, excepting any water which may be pumped from wells into a covered reservoir or aqueduct, without exposure to the atmosphere, and which shall not be afterwards mixed with unfiltered water.

Company to give notice to board of trade before resorting to new sources of supply, who may thereupon appoint an inspector to report.

5. Three months before any company shall resort to any new source of supply, such company shall give notice in writing thereof to the lords of the committee of privy council for trade and plantations, hereinafter called the board of trade (*b*), and thereupon, within one month after receipt of such notice, the said board of trade shall, if they think fit, appoint a competent person as an inspector, who shall report with respect to any sources then specially authorized by parliament, whether the directions of the special Act have been complied with in reference thereto, and with respect to any new sources not specially authorised by parliament, whether the same are capable of supplying good and wholesome water for domestic purposes.

Inspector to give notice to companies of his intention to visit new sources.

6. The inspector so appointed as aforesaid shall within ten days after such appointment give notice in writing to the company thereof, and of the time at which he proposes to visit and inspect the said sources, and thereupon, in order to enable him to make such report as aforesaid, it shall be lawful for the said inspector to enter the lands wherein such sources respectively are situate, and to examine and make inquiry touching the premises.

Board of trade to certify their

7. The board of trade shall, within twenty-one days after the receipt from the said inspector of his report, send to such company straight line from Saint Paul's Cathedral in the city of London of

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(*a*) This section is repealed by the Statute Law Revision Act, 1875, (schedule) in part, namely, to "and fifty-five."

(*b*) By 35 & 36 Vict. c. 79, s. 35 (the Public Health Act, 1872), the power and duties of the board of trade under, amongst other Acts, this and the Metropolis Water Act, 1871, shall be exercisable and be performed by the Local Government Board.

Section 7.

approval or disapproval of new sources.

with respect to any such new sources of supply not specially authorized by parliament a certificate in writing of their approval or disapproval thereof, and with respect to any such sources as shall then be specially authorized by parliament a notice in writing stating whether in the judgment of the said board of trade (*c*) the directions of the special Act have in reference thereto been complied with.

If board of trade disapprove, company not to use new source of supply.

8. After the company shall have received a certificate that the said board of trade (*d*) disapproves of any such new source of supply not specially authorized by parliament as aforesaid, it shall not be lawful for the company to use the said source, and after receipt of such notice as aforesaid that in the judgment of the said board of trade the directions of the special Act with reference to any sources then specially authorized by parliament have not been complied with, it shall not be lawful for the company, before complying with such directions with reference to such source, to use the same.

On compl as to quantity and quality board of trade may appoint a person to inquire and report.

9. If at any time complaint as to the quantity or quality of the water supplied by any company for domestic use be made to the board of trade (*d*) by memorial in writing signed by not less than twenty inhabitant householders paying rents for and supplied with water by the company, it shall be lawful for the board of trade, at any time within one month after the receipt of such complaint, to appoint a competent person to inquire into and concerning the grounds of such complaint, and to report to the board of trade thereon.

Powers of person appointed.

10. The person so appointed as aforesaid shall, within three days after such appointment, give notice thereof in writing to the company, and after such notice as aforesaid he shall have power to inspect and examine the waterworks of the company, and to inquire into and concerning the grounds of such complaint; and the company and their officers shall afford all reasonable facilities for such inspection, examination, and inquiry.

Penalty for obstructing inspector.

11. Any person obstructing such inspector in the due prosecution of such inspection, examination, or inquiry, shall forfeit and pay any sum not exceeding ten pounds.

If complaint well founded, notice to be given to company.

12. If after receipt of such report it shall appear to the board of trade (*d*) that the said complaint is well founded, the board of trade shall give notice thereof in writing to the company.

Company to remove ground of complaint.

13. After the receipt of such notice the company shall and they are hereby required within a reasonable time to remove the grounds of such complaint.

Engines to consume their own smoke.

14. Every steam engine, furnace, or other work in which coals which produce smoke during combustion shall be consumed by any company for the purpose of the waterworks shall be constructed on the most effectual principle for consuming its own smoke.

Provision for constant sup-

15. After the expiration of five years from the passing of this Act every company shall, subject to the provisions of the special Act

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(*c*) See note to section 5, *ante*.

Section 15. ply of water by every company.

relating to such company, provide and keep, in the district mains already laid down or hereafter to be laid by them, a constant supply of pure and wholesome water sufficient for the domestic use of the inhabitants of all houses supplied by such company, at such pressure as will make the water reach the top storey of the highest of such houses, but not exceeding the level prescribed by the special Act of such company: Provided that no company shall be bound to provide a constant supply of water to any district main until four-fifths of the owners or occupiers of the houses on such main shall by writing under their hands have required such company to provide such supply, nor even upon such requisition, in case it can be shown by any company objecting to the same that more than one-fifth of the houses on such main are not supplied with pipes, cocks, cisterns, machinery, and arrangements of all kinds for the reception and distribution of water, constructed according to the regulations prescribed by the special Act or by this Act, or which any company, with the approval of the board of trade, may from time to time make in that behalf; and after any such requisition as aforesaid shall have been delivered to the company, it shall be lawful for the surveyor, or any other person acting under the authority of the company, between the hours of nine of the clock in the forenoon and four of the clock in the afternoon, to enter into any house or houses on such district main, in order to ascertain whether the pipes, cocks, cisterns, and machinery of such house and houses are so constructed as aforesaid; and provided also, that any company may, with the consent of the board of trade, suspend the giving of such constant supply, or give the same in succession to the several districts of such company or to any parts of such districts as may be found to be convenient; and provided that it shall be lawful for the company, after due notice, to abstain from supplying, or to cut off the communication pipes, and withdraw the supply of water from any house whereof the pipes, cocks, cisterns, machinery, or arrangements as aforesaid shall not be in conformity with such regulations; provided that neither the Kent Waterworks Company nor the Hampstead Waterworks Company shall be required to give such supply at any height exceeding one hundred and eighty feet above Trinity high water mark, nor the East London Waterworks Company be required to give such supply at any height exceeding forty feet above the level of the pavement nearest the point at which such supply shall be required (*a*).

Penalty for non-compliance with the provisions of the Act.

16. Any company which shall violate, refuse, or neglect to comply with any of the provisions hereinbefore contained shall forfeit to Her Majesty the sum of two hundred pounds, and the further sum of one hundred pounds for every month during which they shall continue to violate or to refuse or neglect to comply with the same after they shall have received notice in writing from the board of trade to discontinue such violation, refusal, or neglect as aforesaid.

Map of underground

17. Every company shall, within one year after the passing of this Act, cause a map to be made of the district within which any mains

(*a*) This section is repealed by the Metropolis Water Act, 1871, section 5 (Sched. A.) except so much thereof as prescribes the height at which the Kent Waterworks Company and the East London Waterworks Company are respectively required to give their supply. The provisions relating to a constant supply now in force, are contained in theMetropolis Water Act 1871, section 7, *et seq.*

Section 17.

works of the companies to be made, and kept at principal office of each company, and be open to inspection (*b*).

or district mains shall have been laid down or formed by them on a scale not less than six inches to a mile, and shall cause to be marked thereon the course and situation of all existing mains and district mains, and shall, within six months from the making of any alterations or additions, cause the said maps to be from time to time corrected, and such additions made thereto as may show the line and situation of all such mains and district mains as may be laid down or formed by them from time to time after the passing of this Act; and such map or a copy thereof, with the date expressed thereon of the last time when the same shall have been so corrected as aforesaid, shall be kept in the principal office of each company, and shall be open to the inspection of all persons interested in the same within the said district, who shall be at liberty to take copies of or extracts from the same.

Companies to furnish particulars of district mains when required (*c*).

18. Every company, on the application of any person supplied with water by such company, shall furnish to such person the particulars of any district main from which such person is supplied, together with the names of the streets through which such district main passes, and the commencement and termination thereof.

Account of receipt and expenditure of rates, &c., to be prepared, and to be open to inspection (*d*).

19. And with respect to the yearly receipt and expenditure of every company, the company shall in each year cause an account in abstract to be prepared of the whole receipt and expenditure of all rates or other moneys levied under the powers of their Act, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account duly audited and certified by the chairman of the company, and also by the auditors thereof, if any, and a copy of such annual account shall be sent, free of charge, to the town clerk of the city of London, and to the vestry clerk of each parish supplied with water by each company respectively not within the city of London, on or before the thirty-first day of January in each year, under a penalty of twenty pounds for each default; and the copy of such account so sent shall be kept by the said town clerk and vestry clerks respectively, and shall be open to inspection by all persons at all reasonable hours, on payment of one shilling for each inspection.

Board of trade may direct prosecutions to enforce provisions of Acts (*d*).

20. Whenever it shall appear to the board of trade that any of the provisions of this Act have been violated, or have not been complied with on the part of any company, or that any company has acted or is acting in a manner unauthorized by the provisions of this Act, and it shall also appear to the said board of trade that it would be for the public advantage that the company should be restrained from so acting, the said board of trade shall certify the same to Her Majesty's attorney general, and thereupon the said attorney general shall proceed by information, or by action, bill, plaint, suit at law or in equity, or other legal proceeding, as the case may require, to recover any penalties which may have been incurred, or otherwise to enforce

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(*b*) This and the 18th section, by Metropolis Water Act, 1871, section 49, are to be read as if instead of the words "district mains" and "district main" in those sections the word "pipes" and "pipe" were substituted respectively.

(*c*) See note to preceding section.

(*d*) Repealed by Metropolis Water Act, 1871, section 5.

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the due performance of the said provisions; and in case the default of the company shall consist in the commission of some Act or Acts unauthorized by law, then the said attorney general, upon receiving such certificate as aforesaid, shall proceed by suit in equity, or such other legal proceeding as the nature of the case may require, to obtain an injunction or order (which the judge in equity, or other judge to whom the application is made, shall be authorized and required to grant, if he shall be of opinion that the Act or Acts of the company complained of is or are not authorized by law), to restrain the company from acting in such illegal manner, or to give such other relief as the nature of the case may require.

Prosecutions to be under the sanction of board of trade and within one year after the offence (*a*).

21. No such certificate as aforesaid shall be given by the said board of trade until twenty-one days after they shall have given notice to the company against or in relation to whom they shall intend to give such certificate of their intention to given such certificate; and no proceedings shall be commenced under the authority of the said board of trade except within one year after the offence shall have been committed.

Cisterns to be supplied with proper ballcocks or other apparatus. Removal, &c. of overflow spouts, &c.

22. Whenever water shall be constantly laid on under pressure in any district main, every person supplied with water under pressure by any company through such main shall, when required by the company, provide a proper cistern or other receptacle for the water with which he shall be so supplied, with an efficient ballcock or other like apparatus; and if any cistern or other receptacle supplied with water under pressure shall be provided with or have any overflow spout, waste pipe, or other means or contrivance immediately connected or capable of being used therewith to carry off the water from such cistern or receptacle, such person shall be bound to give notice to the company of every such overflow spout, waste pipe, or other means or contrivance, and of the situation thereof; and whether such notice shall have been given or not, the surveyor or any other person acting under the authority of the company may, between the hours of nine of the clock in the forenoon and four of the clock in the afternoon, enter into any house in order to examine if there be any waste, misuse, or undue consumption of water by means of any overflow spout, waste pipe, or other means or contrivance; and in case any such waste, misuse, or undue consumption of water shall be found to exist, or shall be deemed likely to occur from the use of any such overflow spout, waste pipe, or other means or contrivance, it shall be lawful for such surveyor or other person to give notice to the person so supplied with water, either to repair and amend or to remove such overflow spout, waste pipe, or other means or contrivance; and if the same shall not be forthwith repaired and amended, or removed, in accordance with such notice, it shall be lawful for the company immediately thereafter to turn off the water from the house, and to cease to supply the same with water.

Cisterns, closets, and baths to be so constructed as to prevent

23. Every cistern or other receptacle for water, and every closet, soil-pan, and private bath which shall be supplied with water by any company, shall be so constructed and used as effectually to prevent the waste, misuse, or undue consumption of water, and the flow or return of foul air or other noisome or impure matter into the mains or pipes of the company, or into any pipes connected or com-

(*a*) Repealed by Metropolis Water Act, 1871, section 5.

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waste or the flow or return of impure matter into the mains, &c.

municating therewith; and notwithstanding anything in "The Waterworks Clauses Act, 1847," or in this Act contained, no company shall be bound to supply water into any cistern or other receptacle for water, closet, soil-pan, or private bath, which shall not be so constructed and used.

Restricting communication with pipes of the company.

24. No person shall make or lay down, or permit to be made or laid down, any pipe or other means or contrivance for taking, using, or obtaining water to communicate with any pipe or apparatus connected with any of the mains or pipes of any company without giving such notice, and except under such superintendence, and according to such direction as is provided by "The Waterworks Clauses Act, 1847," with respect to the communication pipes to be laid by the inhabitants.

Water may be cut off in certain cases.

25. If any person supplied with water by any company shall wilfully do or cause to be done any act, matter, or thing in contravention of the provisions of this Act, or of the special Act relating to such company, or of any Act incorporated therewith, or shall wilfully omit or neglect to do any matter or thing which under such provisions ought to be done for the prevention of the waste, misuse, or undue consumption, or the contamination of the water of the company, it shall be lawful for the company to turn off the water supplied by them to such person, and to cease to supply such person with water, and also to recover from such person by action or suit in any court of competent jurisdiction the amount of any loss, damage, or injury which such company may sustain by means or in consequence of any such act, matter, or thing as aforesaid, or of any such wilful omission or neglect as aforesaid.

Regulations to be made with approval of board of trade.

26. It shall be lawful for any company from time to time, with the approval of the board of trade (*b*), to make such regulations as shall be necessary or expedient for the purpose of preventing the waste or misuse of water, and therein, amongst other things, to prescribe the size, nature, and strength of the pipes, cocks, cisterns, and other apparatus to be used, and to interdict any arrangements, and the use of the pipes, cocks, cisterns, or other apparatus, which may tend to such waste or misuse as aforesaid.

Parish officers, with consent of vestry, may require inhabitants to procure supply of water.

27. If it appear to the churchwardens and overseers of the poor of any parish that any house in such parish is without a proper supply of water, and that an annual supply can be furnished thereto by the company at a rate not exceeding threepence per week, conformably with the scale of rates authorized to be charged by such company, after making the allowance of twenty per cent. hereinafter mentioned, the said churchwardens and overseers shall, with the consent of the vestry of the said parish, give notice in writing to the owner or occupier of such house, requiring him within a time specified therein to obtain such supply, and do all such works as may be necessary for that purpose; and if such notice be not complied with the said churchwardens and overseers shall, with the consent aforesaid, do such works, and recover the expenses incurred from such

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(*b*) See note to section 5, *ante*. This section is repealed by the statute Law Revision Act, 1875, in part, namely the words "with the approval of the board of trade."

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owner, in like manner and with the same remedies for nonpayment, as rates for the maintenance of the poor are by law recoverable in such parish; and the company shall, upon the requisition of the said churchwardens and overseers of the poor, supply with water such house or houses; and the rates for such supply of such house or houses, not exceeding in the whole threepence per week for any one such house, shall be due and payable by the said owner, and shall be recoverable by the company as if such owner had contracted with the company for the supply of such water, and upon such payment the company shall make an allowance of twenty per cent.; and for the purposes aforesaid the person for the time being receiving the rackrent of any such house as aforesaid, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such house were let at a rackrent, shall be deemed to be the owner of such house.

Short title.

28 In citing this Act in other Acts and in legal instruments it shall be enough to use the expression "The Metropolis Water Act, 1852."

Interpretation of terms.

29. In the construction of this Act the expression "company" shall mean and include any of the companies hereinafter enumerated; (that is to say,) the governor and company of the New River brought from Chadwell and Amwell to London, commonly called "The New River Company;" the company of proprietors of the East London Waterworks; the Southwark and Vauxhall Water Company; the West Middlesex Waterworks Company; the Lambeth Waterworks Company; the governor and company of Chelsea Waterworks; the Grand Junction Waterworks Company; the company of proprietors of the Kent Waterworks; and the Hampstead Waterworks Company; and also any other company, board, commissioner, association, person or partnership, corporate or unincorporate, for the time being supplying the metropolis or any part thereof with water for domestic use; the expression "the Special Act" shall mean and include this Act, and every and any Act of parliament relating to the company referred to; and the expression "the metropolis" shall mean and include all places described or referred to in the schedule to this Act.

The SCHEDULE above referred to.

All such places lying on the north side or left bank of the river Thames as are within the exterior boundaries of and are within the ambit formed by the parishes of Fulham, Hammersmith, Kensington, Paddington, Hampstead, Hornsey, Tottenham, Saint Pancras, Islington, Stoke Newington, Hackney, Stratford-le-bow, Bromley, Poplar, and Shadwell.

Such part of the parish of Chelsea as lies north of the said parish of Kensington.

And such parts and places lying on the south side or right bank of the said river as are within the exterior boundaries of and are within the ambit formed by the parishes of Woolwich, Charlton, Greenwich, Deptford, Lee, Lewisham, Camberwell, Lambeth, Streatham, Tooting, Wandsworth, and Putney.

AN ACT

TO AMEND "THE METROPOLIS WATER ACT, 1852;" AND TO MAKE FURTHER PROVISIONS FOR THE DUE SUPPLY OF WATER TO THE METROPOLIS AND CERTAIN PLACES IN THE NEIGHBOURHOOD THEREOF.

34 & 35 VICT. CAP. 113.

21ST AUGUST, 1871.

WHEREAS it is expedient to amend "The Metropolis Water Act, 1852;" and to make further provisions for securing to the metropolis and to certain places in the neighbourhood thereof a constant supply of pure and wholesome water: 15 & 16 Vict. c. 84. (*Public*).

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Preliminary

1. This Act may be cited for all purposes as "The Metropolis Water Act, 1871." Short title.

2. This Act and the Metropolis Water Act, 1852, as the same is amended by this Act, shall be read and construed together as one Act. This and recited Act to be as one.

3. In this Act,— Interpretation of terms.

The expression "the metropolis" shall mean the metropolis as defined by the Metropolis Management Act, 1855: (*a*)

The term "company" shall mean and include any of the companies following; that is to say,—

The governor and company of the New River brought from Chadwell and Amwell to London, commonly called "The New River Company;"

The East London Waterworks;

The Southwark and Vauxhall Water Company;

The company of proprietors of the West Middlesex Waterworks Company;

(*a*) See definition of metropolis in 18 & 19 Vict. c. 120, s. 250, and note to preamble of that Act.

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The company of proprietors of Lambeth Waterwork:
The governor and company of Chelsea Waterworks;
The Grand Junction Waterworks Company;
The company of proprietors of the Kent Waterworks; and also any other corporation, company, board, commissioners, association, person, persons, or partnership, for the time being supplying water for domestic use within the limits of this Act:

The term "person" shall include a corporation aggregate or sole:

The expression "water limits" in relation to a company shall mean such parts of the limits within which such company is authorized to supply water as are within the limits of this Act:

The expression "the special Act," in relation to a company shall mean and include every and any Act of parliament relating to such company:

The expression "metropolitan authority" shall mean, in the places specified in the table in the Schedule (A.) to this Act annexed, the bodies or persons named in the same table:

The term "district" shall mean the area selected for the purpose of constant supply, such area being within the jurisdiction of a metropolitan authority, and also within the water limits of a company, and being coterminous with some one or more services of such company:

The term "premises" shall mean and include any dwelling-house and any part of a dwelling-house, and any stable, yard, or other offices used together or in connexion with any dwelling-house or any part of a dwelling-house:

The term "prescribed" shall mean prescribed by any regulations made under the authority of this Act:

The term "court of summary jurisdiction" means and includes any justice or justices of the peace, metropolitan police magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Act passed in the session of parliament held in the eleventh and twelfth years of the reign of Her present Majesty, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders," and any Acts amending the same:

The term "fittings" includes communication pipes, and also all pipes, cocks, cisterns, and other apparatus used or intended for supply of water by a company to a consumer, and for that purpose placed in or about the premises of the consumer:

The term "owner" means the person who, for the time being, receives the rackrent of the premises with reference to which that term is used, whether on his own account or under or by virtue of any mortgage or charge, or as agent or trustee for any person, or who would so receive the same if the premises were let at a rackrent, and includes every successive owner from time to time of the premises, being such for any part of the time during which the enactment wherein that term is used operates in relation to the premises:

Premises shall be deemed to be on the same service, or on a service, when water is supplied to them by a company from the same service pipe.

Limits of Act.

4. The limits within which the provisions of this Act shall be in force and have effect (in this Act referred to as "the limits of this

Act") shall include the metropolis and the several places set out in schedule to the Metropolis Water Act, 1852, which do not form part of the metropolis.

Repeal of parts of metropolis Water Act, 1852 (*a*).

5. From and after the passing of this Act, the sections of the Metropolis Water Act, 1852, specified in Schedule (B.) to this Act annexed, shall be and the same are hereby repealed, so far as regards their operation within the limits of this Act: Provided always, that no such repeal shall affect any act, matter, or thing duly done or agreed upon before the passing of this Act, under the authority of any of the sections of the said Act hereby repealed.

Supply of water on Sundays.

6. From and after the passing of this Act every company shall on Sundays as on other days supply sufficient pure and wholesome water for the domestic use of the inhabitants within their water limits.

Constant Supply.

Companies to provide constant supply of water.

7. Subject to the provisions of this Act, every company may, and from and after the expiration of eight months from the passing of this Act every company shall, when required so to do, in the manner directed by this Act, provide and keep throughout their water limits (*b*), or throughout such parts of such limits as they may be required in manner aforesaid, a constant supply of pure and wholesome water sufficient for the domestic purposes (*c*) of the inhabitants within such water limits constantly laid on at such pressure as will make such water reach the top story of the highest houses within such water limits (but not exceeding the level prescribed by the special Act) of such company (which supply is in this Act referred to as a "constant supply"); and every such company shall, subject to the provisions of the special Act as the same are amended by this Act, give and continue to give to such inhabitants a constant supply for domestic purposes in manner prescribed (*d*).

Application for constant supply.

8. At any time after the expiration of six months from the passing of this Act, the metropolitan authority (*e*) shall, whenever they are of opinion that there should be in any district a constant supply, make application to the company within the water limits in which such district is situate, requiring a constant supply in such district, and any company may without any such application propose to the metropolitan authority to give a constant supply in any district.

(*a*) These are section 15, except so much thereof as prescribes the height at which the Kent Waterworks Company and the East London Waterworks Company are respectively required to give their supply, sections 19 to 22, both inclusive, and section 27.

(*b*) That is such part of the limits within which a company is authorized to supply water, as are within the limits of this Act; see sections 3 & 4.

(*c*) As to what are domestic purposes, see *Busby* v. *Chesterfield Water and Gas Company*, 27 L. J. M. C. 174 referred to in note to section 150 of 18 & 19 Vict. c. 120, *ante*.

(*d*) That is, if prescribed by any regulations made under the authority of this Act, section 3.

(*e*) See definition of metropolitan authority, section 3, and table in Schedule (A.) to Act.

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Appeal to board of trade (*a*).

9. When application has been made to any company requiring such company to provide a constant supply, or when any company has given notice to a metropolitan authority of a proposal to give a constant supply in any district, and the company so required, or the metropolitan authority upon whom notice of such proposal has been served, object to such requisition or proposal, it shall be lawful for such company or metropolitan authority, within one month after the making of such application or service of such notice, to present a memorial to the board of trade, setting forth their objections to such requisition or proposal, and the party presenting such memorial, or such company, shall give notice to the other party of the presentation of such memorial, and shall transmit to such party a copy of the same. The board of trade shall, as soon as conveniently may be after the receipt of such memorial, take the same into their consideration, and may, if they think fit, institute any inquiry in relation thereto, and may hear such company and authority desiring to be heard, and may make such order in reference thereto, and as to the costs thereof and incident to the same, as to them shall seem just.

Restriction as to compulsory supply by companies.

10. No company shall be compelled to give a constant supply to any premises in any district until the regulations provided for by this Act (*b*) are made and are in operation within such district, or if it can be shown by such company that at any time after the expiration of two months from the time of the service of any requisition for constant supply more than one-fifth of the premises in such district are not provided with the prescribed fittings, without prejudice nevertheless to any renewed requisition at a future period.

In any district in which any default in respect of the prescribed fittings shall be found the metropolitan authority may by notice in writing require the owner or occupier of any such premises within a time to be specified in such notice, to provide the prescribed fittings, or to cause the fittings in such premises to be repaired, so as to prevent any waste of water, and if any person fail to comply with the terms of such notice the metropolitan authority may provide for such premises the prescribed fittings, or repair the fittings within the same, as the case may be.

The expenses incurred by the metropolitan authority in providing such fittings or in making such repairs shall be paid to them by the person liable to pay the rate for the water supplied, or on whose credit the water is supplied, or by the owner (*c*) of the premises.

All such expenses may be recovered, with costs, from the owner, and to the extent of any rent due by the occupier of the premises, from such occupier, by proceedings in a court of summary jurisdiction, or by action in any court having jurisdiction locally in the matter, as if the same were an ordinary simple contract debt; and any sum and costs so recovered from an occupier may be deducted by him from the rent payable by him to the owner, and shall be allowed by the owner and every other person interested in the rent, as if the same had been actually paid as rent; but if in any case an occupier fails to disclose the amount of rent due by him, or the name or address of the owner, he shall be liable to pay the full amount of such expenses and costs:

(*a*) Now the local government board, see Public Health Act, 1872, section 35.

(*b*) See provisions as to regulations, section 17, *et seq.*

(*c*) See definition of "owner," section 3.

Section 10.

Provided further, that as between any such owner and occupier nothing herein contained shall be taken to affect any contract made between them respecting the payment of the expenses of any such works as aforesaid.

Power to board of trade to require constant supply, in certain cases.

11. It shall be lawful for the board of trade (*d*) at any time after the expiration of six months from the passing of this Act, to require a constant supply to be provided in any district by the company within the water limits of which such district is situate, upon complaint made, and in case it appears to such board, after due inquiry,—

That the metropolitan authority refuses to make or unreasonably delays making application for such constant supply, or

That, by reason of the insufficiency of the existing supply of water in such district, or the unwholesomeness of such water in consequence of its being improperly stored, the health of the inhabitants of such district is or is likely to be prejudicially affected.

Notice requiring or proposing constant supply to be served upon company or metropolitan authority.

12. Where a constant supply is required in any district, notice to that effect shall be served, on behalf of the party requiring the same, upon the company required to provide such supply; and where a constant supply is proposed to be given in any district by any company, notice to that effect shall be served on behalf of such company upon the metropolitan authority. In every such notice shall be stated accurately the district in which such constant supply is required or proposed to be given, and the day (not being an earlier day than four months after the date of the service of such notice) upon and from which such supply is to commence.

Extension of time to companies.

13. Where a constant supply is required in any district, and the company is unable, from want of funds or other cause of any kind, to execute all the necessary works within the time prescribed by this Act, the board of trade (*d*), if they think fit, may extend the time for the giving of such supply generally, or may extend the time, and direct such supply to be given at different times in succession, to the several parts of such district, in such manner as may be found most convenient: Provided that application be made by the company for such extension of time within one month after the notice referred to in the last preceding section has been served upon them.

Provision for supply in courts, passages, &c.

14. With respect to cases where a group or number of dwelling-houses are situate in a court or passage, or otherwise in contiguity with or in close neighbourhood to one another, the following further provisions shall have effect; that is to say,

(1.) If at any time it appears to the board of trade (*d*) on the report of the nuisance authority, as defined by the Sanitary Act 1866 (*e*) that a constant supply cannot be well and effectually

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(*d*) See note to section 9.

(*e*) Section 15 of the Act referred to, 29 & 30 Vict. c. 90, defines the "nuisance authority" as any authority empowered to execute the Nuisance Removal Acts. Section 14 of the same Act defines "Nuisances Removal Acts" as the Acts of the 18 & 19 Vict. c. 121, and the 23 & 34 Vict. c. 77 as amended by the Act of 1866.

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provided for that group or number of dwelling-house, except by means of a stand-pipe or other apparatus placed outside the dwelling-houses, the board of trade (*a*) may from time to time make an order to the effect that such group or number of dwelling-houses may be so supplied, and shall serve the same on the company within whose water limits the dwelling-houses are situate :

(2.) If the requisite stand-pipe or other apparatus in accordance with the regulations of the company is provided, then the company shall give to those dwelling-houses a supply accordingly by means of the stand-pipe or other apparatus so provided, and on giving such supply shall be entitled to receive and recover water rates or rents from the owners or occupiers of such dwelling-houses as if the supply had been given in the premises. The expense of providing such stand-pipe or other apparatus shall be borne by the owner of the dwelling-houses, or if there is more than one owner then by the respective owners in such proportions as the board of trade (*a*) shall direct :

(3.) The board of trade (*a*) may at any time abrogate, wholly or in part, the order, or may originally grant it only for a limited period.

Provision for case of frost, &c.

15. Notwithstanding anything in this Act, a company shall not be subject to any liability for not giving a constant supply if the want of such supply arises from frost, unusual drought, or other unavoidable cause or accident (*b*).

Penalties for non-compliance with preceding provisions (*c*).

16. Any company which violates, refuses, or neglects to comply with any of the preceding provisions of this Act shall be liable to a penalty not exceeding two hundred pounds, and to a further penalty not exceeding one hundred pounds for every month during which such violation or refusal or neglect to comply with the said provisions continues after they shall have received notice in writing from the board of trade (*d*), to discontinue such violation, refusal, or neglect as aforesaid.

Regulations.

Company may make regulations.

17. Every company shall, within six months after the passing of this Act, make regulations for the purposes for which regulations may be made under the authority of section 26 of the Metropolis Water Act, 1852, and the provisions of that section shall apply also to the preventing of undue consumption or contamination of water.

(*a*) See note to section 9.

(*b*) As to non-liability of a company for damage by the leakage of one of their pipes, see *Cattle* v. *Stockton Waterworks Company*, L. R. 10 Q. B. 453.

(*c*) See as to recovery and application of penalties incurred by a water-works company, section 44.

(*d*) See note to section 9.

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Amendment of regulations.

18. Any company, if it thinks fit, or if requested so to do by the board of trade (*e*), may repeal or alter any of the regulations made for the purposes aforesaid, or make new regulations instead of any of the same.

In case of default by companies, board of trade may appoint person to report as to regulations, and may make same.

19. In case any company does not make regulations within the time specified in this Act, or in case any company, on being requested in writing by the metropolitan authority, or by any ten consumers of the water supplied by that company, to repeal or alter any of the regulations for the time being in force, or to make new regulations instead of any of the same, refuses so to do, the board of trade (*f*) may, if they think fit, appoint a competent and impartial person of engineering knowledge and experience to report to them as to such regulations as may be necessary for the execution of this Act, or as to the expediency of altering or repealing such regulations, or of making new regulations, in conformity with such request as aforesaid, and on the report of such person the board of trade may make such regulations, repeal, or alterations as they think fit.

Penalties for offences against regulations.

20. By any regulations made under the authority of the Metropolis Water Act, 1852, or of this Act, penalties may be imposed for offences against the same not exceeding in respect of any offence the sum of five pounds, so that every such regulation be so framed as to allow part only of the maximum penalty being inflicted, and any such penalty shall be recoverable as penalties under this Act are recoverable. (*g*)

Notice of regulations to be delivered to metropolitan authority.

21. Within four days after the making of any regulation, or of any repeal of or alteration in any regulation, notice of the same shall be served upon the metropolitan authority by the company or person making the same.

Confirmation of regulations.

22. No regulation, and no repeal or alteration of any regulation, made under the authority of the Metropolis Water Act, 1852, or of this Act, by a company, shall be of any force or effect unless and until the same be submitted to and confirmed by the board of trade (*f*), who may institute such inquiry in relation thereto as they shall think fit, and who at such inquiry shall hear the metropolitan authority, and the company, if desiring to be heard, and the said board shall, if they think fit, or if requested, nominate and have present at such inquiry to advise and assist them a competent and impartial waterworks engineer. The board of trade (*f*) may, after such inquiry, confirm or disallow any such regulation, repeal, or alteration, in whole or in part, or may confirm the same with such modification or alteration as they may think proper; and no such regulation, repeal, or alteration shall be made by the board of trade on any such report as aforesaid, except after a like inquiry and hearing, with the like advice and assistance as aforesaid: Provided that no such regulation, repeal, or alteration shall be confirmed or made (as the case may be) by the board of trade unless notice in that

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(*e*) See note to section 9. As to evidence of existence, and of due making, confirmation, and publication of regulations, see section 25.

(*f*) See note to section 9.

(*g*) See as to recovery of penalties in court of summary jurisdiction, section 45.

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behalf shall have been given by the company to which the same relates, or by such person as the board of trade (*a*) direct, in the London Gazette and in two daily morning newspapers circulated within the limits of this Act, one month at least before the inquiry; and one month at least before any such inquiry is held a copy of the regulation, repeal, or alteration in question shall be sent by such company or person to the office of the metropolitan authority, and the same shall for one month be kept open during office hours at the respective offices of the metropolitan authority and of the said company to the inspection of all persons, without fee or reward, and a copy of the same or of any part thereof shall be furnished to every person who shall apply for the same, on payment of sixpence for every one hundred words contained in such copy.

Publication of regulations.

23. A printed copy of all regulations in force for the time being shall be kept at the office of the metropolitan authority and of every company within the limits of this Act, and all persons may at all reasonable times inspect such copy without payment, and each company shall cause to be delivered a printed copy, authenticated by their seal, of all regulations for the time being in force to every person applying for the same, on payment of any sum not exceeding one shilling and sixpence for every such copy, and a printed copy of the regulations for the time being in force relative to any particular district only to every person applying for the same, on payment of any sum not exceeding threepence for every such copy.

Regulations to be binding upon all parties.

24. All regulations, and every repeal of or alteration in any regulation made, shall, after publication in manner by the last preceding section of this Act directed, be binding upon and be observed by all parties, and shall be sufficient warrant for all persons acting under the same, and a company shall not be bound under any agreement to supply or continue to supply water to any premises unless such regulations as are for the time being in force are duly observed in respect of those premises.

Evidence of regulations.

25. A printed copy of regulations relating to any company, dated and purporting to be made as aforesaid, and to be authenticated by the seal of such company, shall be conclusive evidence of the existence and of the due making, confirmation, and publication of such regulations in all prosecutions or proceedings under the same, without adducing proof of such seals, or of the fact of such confirmation or publication of such regulations or of any of the requirements of this Act relative thereto having been complied with.

Supply of prescribed fittings.

Notice relating to constant supply to be published in London Gazette, &c.

26. When notice in relation to a constant supply in any district has been served upon or by any company, the party by whom or on whose behalf such notice shall be served shall, within five days after the service thereof, cause to be published a copy of the same once in the London Gazette, and copies of the same once at least in each of two successive weeks in any two daily newspapers circulated within the limits of this Act.

(*a*) See note to section 9.

Section 27.

Company may issue notice upon owners and occupiers to provide prescribed fittings.

27. Where in any district any company is required or has proposed to provide a constant supply, such company may, at any time after the expiration of one month after the publication in the London Gazette of a copy of the notice requiring or proposing such constant supply, unless a memorial or application has been presented or made to the board of trade objecting to such constant supply or seeking an extension of time, and if any such memorial or application has been presented or made, then at such time after the determination of the board of trade in relation to such memorial or application as such board shall approve and order, cause to be served on the owner or occupier of any premises within such district a notice requiring such owner or occupier to supply such premises with the prescribed fittings.

Owner or occupier to provide prescribed fittings.

28. Every owner or occupier of premises upon whom notice to that effect has been served shall, within two months after the date of the service of such notice, provide the prescribed fittings, and shall from time to time keep the same in proper repair.

In case of default by owner or occupier, company may provide or repair prescribed fittings.

29. Where in any district any company is required or has proposed to provide a constant supply, and

Any owner or occupier of premises upon whom notice to provide prescribed fittings has been served by such company makes default in providing the prescribed fittings, such company, if they think fit, may provide such fittings; or

Where in any such district the fittings of any person are out of order, and not as prescribed, such company may by notice in writing require such person, within twenty-four hours after the date of the service of such notice, to cause the same to be repaired, so as to prevent any waste of water; and if any person fail to comply with the terms of such notice such company (if they think fit) may repair the fittings of such person.

The expenses incurred by such company in providing such fittings or in making such repairs shall be paid to them by the person liable to pay the rate for the water supplied or on whose credit the water is supplied by means of such fittings, or by the owner of the premises.

All such expenses may be recovered, with costs, from the owner, and to the extent of any rent due by the occupier of the premises from such occupier, by proceedings in a court of summary jurisdiction (*b*), or by action in any court having jurisdiction locally in the matter, as if the same were an ordinary simple contract debt; and any sum and costs so recovered from an occupier may be deducted by him from the rent payable by him to the owner, and shall be allowed by the owner and every other person interested in the rent, as if the same had been actually paid as rent; but if in any case an occupier fails to disclose the amount of rent due by him, or the name or address of the owner, he shall be liable to pay the whole amount of such expenses and costs: Provided, that as between any such owner and occupier nothing herein contained shall be taken to affect any contract made between them respecting the payment of the expenses of any such works as aforesaid.

Power to enter premises for

30. Where in any district any company is required or has proposed to provide a constant supply, the officers or agents of such company,

(*b*) See definition of "court of summary jurisdiction," section 3.

Section 30. inspection and repair of fittings.

or of the party requiring such supply, or any person appointed for such purpose by the board of trade (*a*) may, at all reasonable times, enter any premises within such district, in order to inspect the premises for the purposes of this Act, and examine the same with a view to ascertain whether there are in or about the same the prescribed fittings, or, where authorized under the provisions of this Act, to provide or repair the fittings; and if any person hinder any such officer, agent, or person from entering and making such inspection or examination, or providing or repairing such fittings, every person so offending shall for every such offence be liable to a penalty not exceeding five pounds.

Settlement of disputes as to sufficiency, &c., of fittings.

31. In the event of any dispute as to whether the fittings of any person are as prescribed, such dispute shall be settled by the court of summary jurisdiction, on the application of either party, which court may make such order as to the amount of the costs of the proceedings before such court as seems just, and the decision of such court shall be final and binding on all parties.

Penalties for non-compliance with the provisions of Act.

32. Where in any district any company is required or has proposed to provide a constant supply,—

If any person supplied with water by such company wilfully or negligently causes or suffers any fittings to be out of repair, or to be so used or contrived as that the water supplied to him by such company is or is likely to be wasted, misused, unduly consumed, or contaminated, or so as to occasion or allow the return of foul air or other noisome or impure matter into any pipe belonging to or connected with the pipes of such company, he shall for every such offence be liable to a penalty not exceeding five pounds; or

If any person supplied with water by such company wrongfully does or causes or permits to be done anything in contravention of any of the provisions of the special Act or this Act, or wrongfully fails to do anything which, under any of those provisions, ought to be done for the prevention of the waste, misuse, undue consumption, or contamination of the water of such company, they may (without prejudice to any remedy against him in respect thereof) cut off any of the pipes by or through which water is supplied by them to him or for his use, and may cease to supply him with water, so long as the cause of injury remains or is not remedied; and in every case of so cutting off or ceasing to supply, the company shall within twenty-four hours thereafter give to the nuisance authority, as defined by the Sanitary Act, 1866 (*b*), notice thereof.

Absence of proper water fittings in premises to be a nuisance.

33. The absence in respect of any premises of the prescribed fittings after the prescribed time shall be a nuisance, within section 11 and sections 12-19 (inclusive) of the Nuisances Removal Act for England, 1855, and within all provisions of the same or any other Act applying, amending, or otherwise relating to those sections; and that nuisance, if in any case proved to exist, shall be presumed to be such as to render the premises unfit for human habitation within section 13 (*c*) of the Nuisances Removal Act for England, 1855, unless and

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(*a*) See note to section 9.

(*b*) See note to section 14.

(*c*) The provision here mentioned empowers the justices to prohibit the using of the house or building for human habitation until it is rendered fit for that purpose.

until the contrary is shown to the satisfaction of the justices acting under that section. Section 33.

Provision respecting fire-plugs (*d*).

34. Section 32 of the Metropolitan Fire Brigade Act, 1865, shall operate, subject and according to the provisions following (that is to say);

(1.) In that section and in this provision the term "fire-plug" and the term "plug" shall include hydrant and all other apparatus necessary or proper in connexion with the Company's pipes for supply of water in case of fire:

(2.) Where a company give a constant supply in any part of their water limits they may, if they think fit, give notice thereof to the metropolitan board of works:

(3.) If the metropolitan board of works do not within two months after receipt of any such notice specify, as regards that part of the company's water limits, what plugs for supply of water in case of fire, at what places, of what dimensions, and in what form they require the company to provide, then, at any time after the expiration of that time, the company may, if they think fit, provide in and for that part of their water limits such plugs for supply of water in case of fire, at such places, of such dimensions, and in such form as to the company seem necessary or proper:

(4.) Thereupon, as regards that part of the company's water limits, the company shall be deemed to have fully discharged all obligations imposed on them by the said section 32:

(5.) All plugs provided by a company in pursuance of this provision may, for the purposes of the fire brigade, be used as if they had been provided on the requisition of the metropolitan board of works under the said section 32:

(6.) The providing of plugs by a company under this provision shall be at the expense of the metropolitan board of works, and the cost, charges, and expenses of the company in or about the providing of the same shall be paid to the company by the metropolitan board of works, on demand, out of their general rate, and in default may be sued for and recovered, with costs, by the company in any court of competent jurisdiction for the recovery of any ordinary simple contract debt of the like amount.

Quality of Water.

Power to board to appoint persons to inquire and report as to quality of water.

35. The board of trade (*e*) may at any time, if and when they think fit, appoint a competent person to inquire into and report on the quality of the water furnished by any company, notwithstanding that no complaint has been made and signed by twenty inhabitant householders, as prescribed by section 9 of the Metropolis Water Act, 1852; and sections 10 and 11 and 13, and the other provisions of that Act, shall apply in every respect as if such person were appointed under section 9 of that Act, and as if any matter reported to the board of trade (*e*) as requiring alteration on the part of a company had been the subject of a complaint by such householders as aforesaid.

(*d*) The 32nd section here referred to, transfers to the metropolitan board the powers of local bodies, &c., as respects fire-plugs.

(*e*) See note to section 9.

Section 36.

Appointment and duties of water examiner.

36. There shall be a water examiner, being a competent and impartial person, from time to time appointed by and removable by the board of trade (*a*) who shall from time to time, in such manner as the board of trade (*a*) direct, examine the water supplied by any company, in order to ascertain whether or not the company have complied with the requirements of section 4 (*b*) of the Metropolis Water Act, 1852, and shall from time to time report the results of his several examinations to the board of trade (*a*); and the board of trade (*a*) shall send a copy of every such report to the company to which the same relates, and the company may, if they think fit, on each occasion of such examination, be represented thereat by some officer, but such officer shall not interfere in the examination.

There shall be paid to such water examiner such remuneration by the companies and in such proportions as such board appoints.

Accounts.

Accounts, &c.

37. Every company shall, on or before the thirty-first day of July in each year, fill up and forward to the board of trade, and to the town clerk of the city of London, and to the metropolitan board of works, and to the vestry clerk of each parish within which water is supplied by each company respectively not within the city of London, a statement of account, made up to the end of their financial year then last passed, in such form and containing such particulars as may from time to time be prescribed by the board of trade (*a*).

Each company shall keep copies of such statement at their office for one year after the date thereof, and sell the same to any applicant at a price not exceeding one shilling for each such copy.

In case any company make default in complying with any of the provisions of this section, they shall be liable to a penalty not exceeding ten pounds for each day during which such default continues.

Auditor of accounts.

38. There shall be an auditor of the accounts of the companies, being a competent and impartial person, from time to time appointed by and removable by the board of trade (*a*).

There shall be paid to such auditor such remuneration by the companies and in such proportions as such board (*a*) appoints.

Ascertainment of capital of companies.

39. The auditor shall, with all practicable speed after the passing of this Act, investigate the accounts of the companies, and ascertain and certify the amounts of their capitals, distinguishing share from loan capital, and shall ascertain and certify the capital of each company, and shall from time to time, as new capital shall be expended, in like manner ascertain and certify the amount of such new capital that has been *bonâ fide* expended for the purposes of the undertaking. Notwithstanding anything in this Act, the auditor shall not investigate

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(*a*) See note to section 9.

(*b*) Section 4 enacts that "every company shall effectually filter all water supplied by them within the metropolis for domestic use, before the same shall pass into the pipes for distribution, excepting any water which may be pumped from wells into a covered reservoir or aqueduct, without exposure to the atmosphere and which shall not be afterwards mixed with unfiltered water."

the accounts of any company antecedent to the date mentioned in that behalf in relation to such company in the schedule C. to this Act annexed. Section 39.

Periodical audit of accounts.

40. The auditor shall once in every half year audit the accounts of the companies.

If he finds the accounts correct he shall certify the same, but if in any instance he finds the accounts of any company incorrect in principle or in detail, he shall require such company to correct such accounts in such manner as he thinks right, and no future dividend shall in any case be declared by any company until their accounts are certified by the auditor: Provided that the suspension of a dividend under this section shall not operate until after the expiration of nine months from the date of the audit.

Facilities for auditor.

41. Each company shall, during as well as subsequent to the close of that half year to which the accounts relate, give to the auditor, his clerks and assistants, access to the books and documents of such company, and shall, when required, furnish to him and them all vouchers and information requisite for the purposes of the audit, and shall afford to him and them all facilities for the proper execution of his and their duty; and any company making default in complying with any of the provisions of this section shall, for every such default, be liable to a penalty not exceeding ten pounds.

Arbitration between auditor and company.

42. If any company think themselves aggrieved by any act or determination of the auditor, the matter in difference shall be referred to the determination of an arbitrator agreed on between such company and the auditor, or, in default of agreement, appointed, on the application of either party, by the Lord Chief Justice of the Court of Common Pleas; and the reference shall be subject and according to the provisions of the Common Law Procedure Act, 1854; and the decision of the arbitrator shall be final and conclusive; and, subject to this provision, such company shall observe and abide by the directions and determinations of the auditor.

Arbitration.

Disputes may be settled by arbitration.

43. Where any dispute arises between any persons whatsoever in relation to the execution of this Act, or to any act, matter, or thing incident to or consequent upon the execution of the same, and where the method of determining any such question in dispute is not expressly provided for, such question may, if the parties so desire, be settled by arbitration in manner prescribed by the Companies Clauses Consolidation Act, 1845 (*c*), with respect to the settlement of disputes by arbitration.

Penalties.

Recovery and application of penalties.

44. Every penalty incurred by any company by reason of non-compliance with any of the provisions of this Act shall go and belong to the metropolitan authority within the jurisdiction of which the same has been incurred, and may be sued for and recovered by such

(*c*) Sections 127—134.

Section 44.

metropolitan authority in any court of competent jurisdiction for the recovery of any ordinary simple contract debt of the like amount, and shall be paid and applied as such metropolitan authority shall from time to time direct (*a*).

Every such penalty shall be borne and paid (to the satisfaction of the auditor appointed as in this Act provided) exclusively by and out of the divisible profits of the company by whom the penalty is incurred, and by way of reduction of dividend.

Summary proceedings for penalties, &c.

45. Except as is by the next preceding section expressly provided, all penalties under this Act may be sued for and recovered in the court of summary jurisdiction (*b*).

Miscellaneous.

Form and service, &c., of instruments.

46. Any instrument (including a notice, order resolution, declaration, requisition, consent, approval, disapproval, or other document) made, given, delivered, or served under this Act, or any regulation thereunder, may be either in print or in writing (including lithograph), or partly in print and partly in writing (including lithograph), and, if the instrument of a company shall be sufficiently authenticated by the name of their secretary being affixed thereto in print or in writing, or by a stamp on behalf of the company; and it shall be sufficient in all cases where any such instrument is required to be given to or served on the owner or occupier of any premises to address it to such owner or occupier by his description as owner or occupier (as the case may be) of the premises (naming them) in respect of which it is given or served, without further name or description; and any such instrument may be addressed to owners or occupiers of any number of contiguous or neighbouring premises collectively, and when so addressed may be served on more owners and occupiers than one (so that separate copies be served on the respective owners and occupiers of the several premises concerned); and any such instrument may be served on any owner, occupier, or other person either personally or by sending the same through the post in a letter addressed to him by name at his last known place of abode or business, or by delivering the same to some inmate at his last known or usual place of abode or business, or in case of an occupier to any inmate of the premises in respect of which it is given or served, or if the premises are unoccupied, and the place of abode of the person to be served is, after diligent inquiry, unknown, it shall be sufficient to affix it, or a copy thereof, on some conspicuous part of such premises.

Act not to apply to certain property and accounts of the New River Company.

47. Nothing in this Act shall be deemed to apply to any of the landed estate, houses, or property of the new River Company not directly used for or connected with their water supply, or to authorize or empower the auditor to investigate or audit any accounts of the New River Company other than those relating to their water supply.

(*a*) As to application of penalties, see 25 & 26 Vict. c. 102, s. 105, and note (*e*) to that section, p. 221, *ante*.

(*b*) See interpretation of "court of summary jurisdiction," section 3.

Section 48.

Incoming tenant not to pay arrears of outgoing tenant, unless, by express agreement.

48. In case any consumer leave the premises where water was supplied to him without paying to the company the rate due from him, the company shall not require from the next tenant of the premises payment of the arrears so left unpaid, unless the incoming tenant agreed with the defaulting consumer to pay the arrears, but the company shall, notwithstanding any such arrears, supply water to the incoming tenant, on being required by him so to do.

Amendment of sections 17 and 18 of Metropolis Water Act, 1852.

49. Sections 17 and 18 of the Metropolis Water Act, 1852, shall be read as if instead of the words "district mains" and "district main" in the said sections the words "pipes" and "pipe" were substituted respectively; and every company shall, upon the map, and upon every alteration of the same made in conformity with the provisions of the said section 17, as amended by this section, cause to be marked every screw-cock or apparatus by means of which water is permitted to flow or is prevented from flowing from the main into any pipe within the water limits of such company.

Saving for ordinary powers.

50. Except as in this Act provided, nothing in this Act shall take away, abridge, or prejudicially affect any right or power which a company would have had under their special Act or the Metropolis Water Act, 1852, or under any charter or otherwise, if this Act had not been passed.

Costs.

Expenses of Act.

51. All costs, charges, and expenses of or incidental to the preparing, applying for, and passing of this Act, and of promoting the Bill for the like purposes introduced previous to the same, shall be paid by the mayor, aldermen, and commons of the city of London, and the metropolitan board of works, in such proportions and as and to whom the board of trade (*c*) shall direct.

(*c*) See note to section 9.

Sched. A.

SCHEDULE A.

Places.	Description of Metropolitan Authority.
The City of London and the liberties thereof.	The mayor, aldermen, and commons of the city of London.
The metropolis, except the City of London and the liberties thereof.	The metropolitan board of works.
Any place within the limits of this Act not included in the above descriptions, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any local Act with powers of improving, cleansing, or paving such place.	The commissioners, trustees, or other persons intrusted by the local Act with powers of improving, cleansing, or paving.
Any place within the limits of this Act not included in the above descriptions, and within the jurisdiction of local boards constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts.	The local board.
Any place or parish within the limits of this Act not within the above descriptions, and in which a rate is levied for the maintenance of the poor.	The vestry, select vestry, or other body of persons acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.

SCHEDULE B.

Parts of the Metropolis Water Act, 1852, which are referred to in section 5 of the foregoing Act, viz.:—

Section 15, except so much thereof as prescribes the height at which the Kent Waterworks Company and the East London Waterworks Company are respectively required to give their supply, sections 19 to 22, bothinsive, and section 27.

SCHEDULE C.

Sched. C.

Setting forth in relation to each company the date antecedent to which the accounts of such company shall not be investigated.

Name.	Date.
The Governor and Company of the New River brought from Chadwell and Amwell to London, commonly called the New River Company.	16th day of July 1866.
The company of proprietors of the East London Waterworks.	15th day of July 1867.
The Southwark and Vauxhall Water Company -	12th day of April 1867.
The West Middlesex Waterworks Company -	13th day of May 1869.
The Lambeth Waterworks Company - -	13th day of May 1869.
The Governor and Company of Chelsea Waterworks.	3rd day of June 1864.
The Grand Junction Waterworks Company -	29th day of May 1868.
The Company of Proprietors of the Kent Waterworks.	30th day of June 1864.

AN ACT

FOR REGULATING MEASURES USED IN SALES OF GAS.

22 & 23 VICT. CAP. 66.

13TH AUGUST, 1859.

WHEREAS it is expedient that the measurement used in sales of gas for lighting, heating, and other purposes, should be hereafter regulated by one uniform standard, and that all meters should be stamped as hereinafter provided: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Interpretation of words "meter" and "person."

1. In construing this Act the word "meter" shall mean gas meter, and shall include every kind of machine used for measuring gas; and the word "person" shall include corporations.

Fixing unit of measure.

2. After the passing of this Act, the only legal standard or unit of measure for the sale of gas by meter shall be the cubic foot containing 62·321 pounds avoirdupois weight of distilled or rained water, weighed in air at the temperature of sixty-two degrees of Fahrenheit's thermometer, the barometer being at thirty inches, except as relates to contracts made before the passing of this Act by which a different unit of measure is adopted, which contracts may not be renewed.

Models of measures to be made and verified under the direction of the treasury.

3. Within three months next after the passing of this Act models of gasholders measuring the said cubic foot, and such multiples and decimal parts of the said cubic foot as the lord high treasurer or the commissioners of Her Majesty's treasury of the United Kingdom for the time being shall judge expedient, and from time to time after the expiration of the aforesaid period of three months, models of such further multiples and decimal parts of the said cubic foot as the lord high treasurer or the said commissioners shall from time to time think expedient, shall be carefully made with proper balances, indices, and apparatus, for testing the measurement and registration of meters, and such models shall be verified under the direction of the lord high treasurer or the said commissioners, and when so made and verified shall be deposited in the office of the comptroller general of the Exchequer at Westminster; and copies of the models so from time to time deposited, verified as aforesaid, shall be sent to the lord mayor of London, and the chief magistrate of Edinburgh and Dublin, and

Models to be deposited.

Section 3.

to the chief magistrate of such other cities and boroughs, and to such other places and persons in Her Majesty's dominions, as the said lord high treasurer or the aforesaid commissioners may from time to time direct; and the said lord high treasurer or the said commissioners shall appoint a competent person or persons to design and make, subject to the approval and by direction of such lord high treasurer or the said commissioners, stamps of a uniform design to be used for stamping meters throughout the United Kingdom, with only such variations of numbers or marks thereon as shall be sufficient to distinguish each inspector's district.

Copies of the models of gasholder to be provided by order of general or quarter sessions in England, and by meetings of justices in Scotland.

4. In England at some general or quarter sessions of the peace within nine months next after the passing of this Act, the justices of the peace of every county, riding, or division, or county of a city or county of a town, in general or quarter sessions assembled (*a*), and in such boroughs as may adopt this Act, as hereinafter provided, the town council at the meeting next after such adoption (*b*), and in Scotland the justices of the peace at a meeting to be called for the purpose by the sheriff of each county, and the magistrates of each royal burgh, within nine months after the passing of this Act, and so from time to time at any subsequent general or quarter sessions or meeting so called, shall determine the number of copies of the said models of gasholders, with proper balances, indices, and apparatus as aforesaid, which they shall deem requisite for the testing of meters within their respective jurisdictions, and shall direct that such copies, verified and stamped at the Exchequer, together with such number of stamps for stamping meters as they shall deem requisite, shall be provided for the use of the same, and shall fix the places at which such copies and stamps shall be deposited, and shall appoint a sufficient number of inspectors of meters for the safe custody of such copies and stamps, and for the discharge of the other duties hereinafter mentioned, and shall allot to each inspector a separate district, and from time to time, when necessary, shall subdivide and re-allot such districts, and all such districts shall be distinguished by the number or mark applied thereto on such stamps, and they shall direct what reasonable remuneration shall be paid to such inspectors for the discharge of such duties as they shall have been ordered by such justices or town council or magistrates as aforesaid to perform, and they are hereby empowered to suspend or dismiss any inspectors so appointed, or to appoint additional inspectors as occasion may require: Provided always, that nothing herein contained shall extend to compel any town council in England or royal burgh of Scotland, except such as are county towns, wherein gas is used, to provide copies of the said models and stamps, or to appoint an inspector or inspectors for the performance of the duties prescribed by this Act; and that it shall be lawful for the justices of the peace in any county, and for the magistrates of any royal burgh within such county, where they shall agree, to unite the whole or a portion of the county with such royal burgh, and to appoint one inspector therefor, and to provide, at their joint expense, copies of the said models and stamps to be used within

Appointment of inspectors.

(*a*) The powers given by this Act as amended by 23 & 24 Vict. c. 146, are, as to the metropolis, transferred to the Metropolitan Board of Works by 24 & 25 Vict. c. 79, s. 1, *post*.

(*b*) "Where an act is to be done by the order of the legislature at a particular sessions, and at that sessions alone, no subsequent sessions has power to do it, and there is no authority to adjourn;" L. Campbell in *Bowman* v. *Blyth*, 26 L. J. M. C. 57.

Section 4.

such united districts: Provided always, that in every borough in England where there is a town council, not being a manufacturer or seller of gas, it shall be lawful for such town council, within six months after the passing of this Act, after one month's notice duly given in the manner in which notices are usually published by such town council, to adopt this Act, if the majority of the members present at any council meeting at which the subject is appointed to be considered shall so determine; and if no resolution to that effect shall be passed within such time, then the justices aforesaid, at their next practicable general or quarter sessions after the expiration of such six months, shall in reference to any borough not so adopting this Act carry this Act into effect; and in all boroughs as aforesaid in which the town council is a manufacturer or seller of gas, the justices of such boroughs shall have such and the like powers of adopting and carrying into effect the provisions of this Act within such boroughs as by this Act are given to town councils not being manufacturers or sellers of gas.

Officers of the Exchequer at Westminster to stamp copies of models.

6. (*a*) The copies of the said models so directed by the said justices, magistrates, or town council to be verified and stamped at the exchequer shall be compared with the models deposited with the comptroller general of the exchequer as aforesaid, and if correct shall be verified and stamped by the comptroller general, or some other officer of the exchequer at Westminster, duly authorized, upon payment of such fees as are at present payable upon verification and stamping a set of measures under the Acts relating to weights and measures, and no stamp duty shall be payable thereon.

Expense of providing copies of models and remuneration of inspectors defrayed out of county rates, &c.

7. The expense of providing and transmitting such copies of models of gasholders, with proper balances, indices, and apparatus as aforesaid, and of the stamp to be used by the inspectors, and the remuneration to the inspectors, shall be paid in England out of the stock raised in such counties, ridings, divisions, counties of cities or counties of towns, and in boroughs out of any funds applicable to lighting purposes, and if no such funds then out of the borough fund; and in Scotland such expenses in the respective shires and stewartries, and cities or royal burghs, shall be assessed by the commissioners of supply upon such shires and stewartries, and upon cities or royal burghs by the magistrates thereof, according to the real rent of lands and heritages as appearing on the valuation roll of such shires, stewartries, and burghs respectively, and in such manner and by such persons as the said commissioners of supply and magistrates respectively may determine and appoint, and such assessments shall be collected under the same powers of levying and recovery as are competent for levying and recovering the land tax: Provided always, that in the city of London the expenses and remuneration aforesaid shall be paid out of the consolidated rate raised by the commissioners of sewers of the city of London, and in Ireland such expenses in the respective boroughs and towns shall be provided for and paid respectively out of any funds applicable to lighting purposes, and if no such fund then out of any other borough or town fund.

No maker or seller of meter, or person in the service of any gas company or manufacturer

8. No maker, repairer, or seller of meters or of gas, or person employed in the making, repairing, or selling of meters or gas, shall be an inspector of meters under the provisions of this Act; and every inspector shall forthwith enter into a bond or recognizance to the Queen, to be sued for in any courts of record, in such sum, and either

(*a*) Section 5 relates to Ireland only.

Section 8.

of meters or gas, to be an inspector. Inspector to enter into recognizances.

with or without a surety or sureties, as the justices, magistrates, town council, or other persons by whom he may have been appointed shall fix, for the due and punctual performance of the duties of his office, and for the due and punctual payment at such time or times as he may be directed by the justices, magistrates, town council, or other persons by whom he may have been appointed, of all fees received by him under the authority of this Act, and for the safety of the said copies of models and stamps committed to his charge, and for their due restoration and surrender to such person or persons as may be appointed to receive them by the justices, magistrates, town council, or other persons aforesaid immediately on his removal or other cessation from office.

Inspectors to attend at towns where gas is consumed, when required by justices.

9. In England the justices in general or quarter sessions assembled, or the town council in boroughs adopting this Act at any meeting thereof, and in Scotland the justices or magistrates at a meeting called for the purpose, and in Ireland the town council or town commissioners of any such borough or town as aforesaid, shall determine and appoint on what days, at what hours, and what places each and every inspector shall attend with the said copies of models and stamps in his custody at each of the several towns and districts within their respective jurisdictions as they shall deem expedient; and every such inspector so attending shall examine, test, and, if found correct, stamp all such meters as shall be required under the provisions of this Act to be so examined, tested, and stamped, and shall deface or destroy the stamp on any meter tested and found incorrect under the provisions of this Act, and he shall keep a book wherein he shall enter minutes of all such examinations and testings, with the numbers of identity and capacity marked by the manufacturer on such meters, and give, if required, a certificate under his hand of every such stamping and defacing; and every inspector shall once in every quarter of a year account to the treasurer of the county, riding, division, county of a city or county of a town, or borough or town, or to such other person as shall be duly authorized by those by whom he may have been appointed, for all fees received by him under this Act, and shall pay the amount thereof to such treasurer as aforesaid, who shall account for the same.

Inspectors to pay fees to treasurer of county, &c.

Meters when stamped need not be re-stamped.

10. No meter duly stamped under the authority of this Act shall be liable to be re-stamped, although the same be used in any other place than that at which the same was originally stamped, but shall be considered as a legal meter throughout the United Kingdom, unless found to be incorrect within the meaning of this Act.

Penalty on inspector for misconduct.

11. In case any inspector of meters shall stamp any meter without duly testing and finding the same to be correct, or shall refuse, or for three days after being so required under the provisions of this Act neglect, without lawful excuse, to test any meter or to stamp any meter found to be correct on being so tested, or shall be guilty of a breach of any duty imposed upon him by this Act, or shall otherwise misconduct himself in the execution of his office, every such offender shall upon conviction forfeit a sum not exceeding £5 for every such offence.

Meters not to be stamped if more than two per cent. incorrect in

12. No meter shall be stamped which shall be found by the inspector to register, or be capable of being made by any contrivance for that purpose, or by increase or by decrease of the water in such meter, or by any other means practically prevented in good meters, to register, quantities varying from the true standard measure of gas

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favour of the buyer, or three per cent. in favour of the seller, and to be stamped if erroneous to no greater extent.

more than two per centum in favour of the seller or three per centum in favour of the consumer; and every meter, whether stamped or unstamped, which shall be found by such inspector to register or be so capable of being made to register quantities varying beyond the limits aforesaid, shall be deemed incorrect within the meaning of this Act; and every meter which shall be found by such inspector to measure and register quantities accurately, or not varying beyond the limits aforesaid, and shall be found incapable by any such means as aforesaid of being made to register quantities varying beyond the limits aforesaid, shall be considered to be correct, and be stamped as aforesaid in such manner and on such part of the meter as shall be specially directed by the authority appointing him, or in default of such direction as shall in his opinion best prevent fraud: Provided always, that every meter having a measuring capacity at one revolution or complete action of the meter of not less than five cubic feet, and having permanently marked upon it in some conspicuous place the words "without float," shall be stamped by the inspectors, if found correct, within the meaning of this Act, in all other respects except that it is capable of being made by abstraction of water to register incorrectly against the seller of gas, but it shall not be lawful after the time aforesaid to use in the sale of gas any such meter, when so stamped by the inspector, except by written agreement between the buyer and seller specifying that this description of meter shall be used.

Certain meters incorrect against the sellers of gas may be used by agreement.

Rules for testing meters.

13. The following rules shall be observed by the inspector in testing meters under the provisions of this Act:

Firstly, the meters shall be tested for soundness or leakage only, and not for percentage of error, when fixed on a horizontal base, and with gas under a pressure equal to a column of water three inches high, with a light or lights consuming not more than one-twentieth part of its measuring capacity per hour marked thereon, nor less than one-half of a cubic foot per hour, for all meters of a measuring capacity not exceeding one hundred cubic feet per hour, and not more than one-fortieth part of its said measuring capacity per hour for all meters of any greater measuring capacity per hour than one hundred cubic feet; and all meters found to work under such test shall be deemed sound meters, and any meter found not to work under such test shall not be stamped:

The meter to be tested for per-centage of error shall be fixed on a horizontal base, and shall be tested at a pressure equal to a column of water five-tenths of an inch high, and passing the quantity of gas or atmospheric air per hour which shall be marked thereon as its measuring capacity per hour, and the water used in such testing, and the air of the room in which such testing shall be made, shall be as nearly as practicable of the same temperature as the gas or air passed through the meter.

Penalty for counterfeiting stamps.

14. If any persons shall make, except under the authority of this Act, or forge or counterfeit, or cause or procure to be made, except as aforesaid, or forged or counterfeited, or knowingly act or assist in the making, except as aforesaid, or forging or counterfeiting, any stamp or mark which may be hereafter used for the stamping or marking of any meter under this Act, every person so offending shall for every such offence forfeit on conviction a sum not exceeding £50 or less than £10; and if any person shall knowingly sell, utter, or dispose of, let, lend, or expose to sale, any meter with such forged stamp or mark thereon, every person so offending shall for every such offence forfeit on conviction a sum not exceeding £10 or less than

40s., and all meters with such forged or counterfeit stamps shall be forfeited and destroyed. Section 14.

Penalty for obstructing inspector.

15. Any person who shall knowingly repair or alter, or knowingly cause to be repaired or altered, or knowingly tamper with, or do any other act in relation to any stamped meter so as to cause such meter to register unjustly or fraudulently, or who shall prevent or refuse to allow lawful access to any meter in his possession or control, or the supply of water thereto as hereinafter provided, or shall obstruct or hinder any examination or testing authorized by this Act of any such meter, shall on conviction forfeit a sum not exceeding £5, pay the fees for removing and testing, and the expense of purchasing and fixing a new meter; provided that the payment of any such penalty as aforesaid shall not exempt the person paying from liability to indictment or other proceeding at law to which he would otherwise be liable, or deprive any person of the right to recover damages against such person for any loss or injury sustained by such Act or default.

Consumers may use any stamped meter.

16. Every consumer of gas may purchase and use for the measurement of the gas supplied to him any meter duly stamped under the authority of this Act, provided that the gas to be consumed per hour shall not exceed the quantity per hour the meter is intended to measure, so marked on the outside thereof as aforesaid.

After ten years all meters to be stamped.

17. After the expiration of ten years from the passing of this Act, all meters whatsoever not previously stamped which shall be used for buying and selling gas, or for the collecting of any rates or duties, or for making any charges on the passage, transmission, or conveyance of gas, shall be examined and tested under the authority of this Act, and stamped if found correct; and every person who shall after the times respectively fixed by this Act knowingly use any meter which has not been so stamped as aforesaid shall on conviction forfeit a sum not exceeding £5, and any contract, bargain, or sale made by any such meter shall be void; and every such meter so used shall, on being discovered by any inspector so appointed as aforesaid, be seized, and, on conviction of the person knowingly using or possessing the same, shall be forfeited and destroyed.

After twelve months no meter to be sold, &c. unless stamped; and unstamped meters may be stamped if required, or stamped meters substituted, at the expense of the person requiring it.

18. No meter for the purpose of ascertaining the quantity of gas sold shall be fixed for use after the expiration of twelve months after the passing of this Act, unless the same shall have its measuring capacity at one revolution or complete action of the meter, and also the quantity per hour it is intended to measure in cubic feet, or multiples or decimal parts of a cubic foot, denominated or marked on the outside thereof in legible letters or figures, and shall be stamped by an inspector of meters under the provisions of this Act; and every person who after the expiration of such twelve months shall fix for use any such meter before it has been so stamped, shall be liable to a penalty of £5 for every such unstamped meter; and all meters required to be tested and stamped, except as hereinafter mentioned, shall be delivered to the inspector at the place where his testing gasholder and apparatus may be kept; and every purchaser and seller of gas by meter may, at his own expense, at any time after the expiration of the said twelve months, require any unstamped meter by which his gas is measured to be examined, tested, and, if found correct, stamped, or he may at his own expense substitute a stamped meter in the place of any such unstamped meter: Provided always, that such purchaser or seller of

Section 18. gas shall, before removal of any such unstamped meter for the purposes aforesaid give twenty-four hours' notice in writing of such intended removal to the other party to the contract.

Fees for testing and stamping meters.

19. The fees for examination, comparison, and testing, with or without stamping, meters, shall be 6d. for each meter delivering a cubic foot of gas in four or more revolutions or complete repetitions of the action of the meter, and 1s. for each meter delivering a cubic foot of gas by any less number of revolutions or complete actions, or one revolution or complete action, and for each meter delivering more than one cubic foot of gas by one revolution or complete action the further sum of one shilling for every cubic foot of gas delivered at one revolution or complete action beyond the first cubic foot.

Power to justices and inspectors to enter houses, &c. and inspect gas measures and meters.

20. In England and in such boroughs and towns as aforesaid in Ireland it shall be lawful for any inspector authorized in writing under the hand of any justice of the peace in England or Ireland, or of any sheriff, justice, or magistrate in Scotland, at the request and expense of any buyer or seller of gas, who shall have given twenty-four hours' notice in writing to the other party to the contract, at all seasonable times to enter any house or shop, store, warehouse, still, yard, or place whatsoever within his jurisdiction where any meter, whether stamped or unstamped, shall be fixed or used, and to examine and test the same, and if necessary for such purpose to remove such meter, doing as little damage thereby as may be; and if upon such examination and testing it shall appear that any such meter is incorrect within the meaning of this Act, or fraudulent, the same shall not be refixed or used again unless and until altered and repaired so as to measure and register correctly, and stamped; and the fees on such removal, examination, and testing of a meter, whether stamped and replaced or not, shall be double the fees hereinbefore made payable for testing and stamping, and shall be payable by the buyer or seller of gas as the justice of the peace in England or Ireland, or the sheriff, justice, or magistrate in Scotland, as the case may be, shall determine, and shall be recoverable accordingly: Provided always, that in case the head office of the person or company to whom such notice is to be given shall be more than twenty miles distant from the meter referred to in such notice, three days' notice in writing shall be given instead of twenty four hours' notice as aforesaid; and provided also, that any person duly authorized by any company or person selling gas by meter may supply water to any meter, so as to keep the water at the correct level.

Disputed decision of inspector to be referred to two inspectors of adjoining districts, &c.

21. In case of any dispute between the buyer and seller of gas by meter, or between any owner of a meter and any inspector of meters under this Act, respecting the correctness of any meter, the inspector shall, if required by any such person dissatisfied with his decision, give such party his reasons in writing for such decision, and such party may require such meter to be examined and re-tested by two inspectors of adjoining or neighbouring districts, to be named by any justice of the peace having jurisdiction in the district where such meter shall have been tested; and the unanimous decision of such last-mentioned inspectors shall be final as to the correctness or incorrectness of such meter, except in case of appeal to the general or quarter sessions; and in case such two inspectors shall not agree, the decision of the inspector of the district to which such meter belongs shall be considered final, except in case of appeal to the

general or quarter sessions, as hereinafter provided; and the expenses of the proceedings to be taken under the powers hereby granted shall be ascertained by the justice, who shall also determine by and to whom the same shall be paid, and such expenses may be recovered in any court of competent jurisdiction. Section 21.

Persons aggrieved may appeal to quarter sessions.

22. In England and in such boroughs and towns as aforesaid in Ireland all persons who may think themselves aggrieved by any act or decision of any inspector or inspectors of meters, or by any order, judgment, or determination of any justice of the peace, mayor, or chief magistrate, relating to any matter or thing in this Act mentioned or contained, may appeal to the justices of the peace, recorder, or other presiding officer at the then next practicable general or quarter sessions to be held for the city, borough, or county within which the alleged cause of appeal shall arise, first giving seven days' notice in writing of such intention to appeal, and the grounds and nature thereof, to the party against whom such complaint is intended to be made, and forthwith after such notice entering into a recognizance before some justice of the peace, mayor, or other chief magistrate, with two sufficient sureties, conditioned to try such appeal and abide the order and award of the said court thereon; and the said justices, recorder, or other presiding officer shall either hear and determine the said complaints at such general or quarter sessions, or, if they think proper, shall adjourn the hearing thereof till the following general or quarter sessions of the peace to be held for such city, borough, or county; and the said justices, recorder, or other presiding officer may, if they or he see cause, reverse or alter such decision, and mitigate any penalty or forfeiture, and may order any money to be returned which may have been levied in pursuance of such order or determination, and may also order any such further satisfaction to be made to the party injured as they or he shall judge reasonable, and may also order such costs to be paid by the party complained against to the party appealing, or *vice versâ*, as they shall think reasonable.

This Act and existing powers not to be cumulative.

23. Where any municipal corporation, local board of health, or two or more justices, or any other corporation or person now have powers of appointing inspectors of meters, and they or such inspectors now have powers of stamping, restamping, examining, or testing meters, those powers and the provisions of this Act shall not be cumulative, but after the expiration of nine months after the passing of this Act the provisions of this Act shall supersede all such powers.

Proceedings not to be quashed for want of form or removed.

24. No proceeding to be had or taken in pursuance of this Act shall be quashed or vacated for want of form, or be removed by *certiorari*, or by any other writ or proceeding whatsoever, into any of Her Majesty's courts of record at Westminster or elsewhere, any law or statute to the contrary notwithstanding.

As to recovery and application of penalties.

25. In England and in such boroughs and towns as aforesaid in Ireland all fees and penalties received and recovered under this Act shall be applied in aid of the stock or fund out of which the expenses of carrying the Act into effect shall be defrayed, and in Scotland all penalties incurred under the provisions of this Act shall be recoverable, with expenses, either before the sheriff of the county, or the magistrate of the burgh or town corporate wherein the same may be incurred or where the offender may reside, or before two or more

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justices of the peace of such county, at the instance either of the procurator fiscal of court or any person who may prosecute for the same; and the whole penalties, after deducting all charges, and such remuneration to the person prosecuting, as the said justices shall think fit, shall be applied in aid of the funds liable under the provisions of this Act to the cost of providing and maintaining copies of the said models in the place where such penalties shall be awarded; and it is hereby provided that it shall be competent for the said courts respectively to proceed in a summary way and to grant warrant for bringing the parties complained of before them, and upon proof on oath by one or more credible witnesses, or on the confession of the offender, or on other legal evidence, forthwith to give judgment on such complaint without any written pleadings or record of evidence, and to grant warrant for the recovery of such penalties and expenses decerned for, failing payment within fourteen days after conviction, by poinding, or by imprisonment for a period, at the discretion of the court, not exceeding sixty days, it being hereby provided that a record should be preserved of the charge and of the judgment pronounced.

Limitation of actions, &c.

27. In all actions brought against any person for anything done in pursuance of this Act, or in the execution of the powers or authorities thereof, such action shall be laid and brought in the county within which the cause of action shall have arisen, and the defendant or defendants in such action may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and that the acts were done in pursuance or by the authority of this Act; and if they shall appear to have been so done, or that such action shall have been brought otherwise than as hereinbefore directed, then and in every such case the jury shall find for the defendant or defendants; upon which verdict, or if the plaintiff or plaintiffs shall become nonsuited, or shall suffer a discontinuance of his, her, or their action after the defendant or defendants shall have appeared thereto, or if a verdict shall pass against the plaintiff or plaintiffs therein, or if upon demurrer or otherwise judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have his, her, or their costs, and shall have such remedy for recovering the same as defendants have for recovering costs of suit by law in any other cases.

Plaintiff not to recover after tender of amends.

28. No plaintiff shall recover in any action for any irregularity, trespass, or other wrongful proceeding made or committed in the execution of this Act if tender of sufficient amends shall have been made by or on behalf of the party or parties who shall commit such irregularity, trespass, or other wrongful proceeding before such action brought; and in case no tender shall have been made it shall be lawful for the defendant or defendants in any such action, by leave of the court wherein such action shall depend, at any time before issue joined, to pay into court such sum or sums of money as he, she, or they shall think fit, whereupon proceedings, order, and adjudication shall be had and made in and by such court as in other actions where defendants are allowed to pay money into court.

AN ACT

FOR BETTER REGULATING THE SUPPLY OF GAS TO THE METROPOLIS (*a*).

23 & 24 VICT. CAP. 125.

28TH AUGUST, 1860.

WHEREAS the following gas companies, that is to say, "The Gaslight and Coke Company," "The City of London Gaslight and Coke Company," "The Commercial Gaslight and Coke Company," "The Equitable Gaslight Company," "The Great Central Gas Consumers' Company," "The Independent Gaslight and Coke Company," "The London Gaslight Company," "The Phœnix Gaslight and Coke Company," "The Ratcliff Gaslight and Coke Company," "The Surrey Consumers' Gas Comany," "The South Metropolitan Gaslight and Coke Company," "The Western Gaslight Company (limited)," "The Imperial Gaslight and Coke Com-

(*a*) This Act was amended by 24 & 25 Vict. c. 79, whereby the powers conferred upon justices of the peace by 22 & 23 Vict. c. 66, as amended by 23 & 24 Vict. c. 146, in so far as relates to the metropolis, were transferred to the metropolitan board, with a repeal of part of section 1 of the last-mentioned Act. This Act, the Metropolis Gas Act, 1860, was further amended or varied by subsequent statutes relating to particular companies to the extent therein expressed, viz., the City of London Gas Act, 1868, so far as relates to the city of London, the South Metropolitan Gaslight and Coke Company's Act, 1869, the Imperial Gas Act, 1869, the Commercial Gas Act, 1875, the Gaslight and Coke Company's Act, 1876, and the South Metropolitan Gaslight and Coke Company's Act, 1876. The enactments repealed or varied by these Acts are referred to in the notes. Under these Acts the board are required to appoint examiners to test the gas supplied by different companies, exclusive of the city of London, and to see that the requirements of the Act in respect of the purity and illuminating power of the gas are complied with, &c.

By the Commercial Gas Act, 1875, section 33, the prescribed testing places, materials, and apparatus provided by the company, shall be under the control and management of the metropolitan board, but the company may have a separate testing place in the same building; by section 35, a gas examiner or gas examiners are to be appointed for the several testing places, and subsequent sections contain provisions for daily reports to, amongst others, the metropolitan board, for quarterly reports of the central gas examiner, register of gas, forfeitures for defect of illuminating power, excess of impurity, &c., giving a right to the board to attend the auditing of the company's accounts, with a provision for arbitration, where the board or company think themselves aggrieved by acts, &c., of auditor. The Gas and Waterworks Facilities Act, 1870, and Amendment Act, 1873, do not apply to any place within the metropolis. Section 15 of latter Act.

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pany," or some of them, are respectively incorporated under the authority of parliament for the purpose of supplying several districts of the metropolis with gas; and the said companies, instead of supplying gas by several mains in the same district, have agreed, as far as possible, each one to confine its supply to a separate district, in order to enconomise capital and avoid the too frequent opening of the public streets; and, subject to the provisions and restrictions of this Act, it is expedient that such districting should receive the sanction of parliament: And whereas the regulations to which those companies are subject are not uniform: And whereas it is expedient that provisions be made for the due regulation of all companies and persons supplying gas within the metropolis: May it therefore please your Majesty that it may be enacted, and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows; that is to say:—

Short title.

1. This Act may for all purposes be cited as "Metropolis Gas Act, 1860."

10 & 11 Vict. c. 15, incorporated with this Act (*a*).

2. "The Gasworks Clauses Act, 1847" (except so far as the provisions thereof are inconsistent with this Act), is incorporated with and forms part of this Act, and shall apply to the several companies before named or referred to as fully as if the gasworks of the several companies were authorized by this Act; and the expression "undertakers" in the recited Act shall be held to apply to every gas company affected by this Act; but it shall not be lawful for any gas company, by the application of any of their profits or funds to make up to the prescribed rate, or the rate of ten pounds per centum per annum where no such rate shall be prescribed, any dividend which shall have been payable more than six years previously (*b*): provided that the powers vested in the justices by the said Act shall be exercised by a magistrate.

Companies and persons to whom Act applies.

3. This Act applies to the several gas companies, and to all persons already or hereafter supplying gas within the metropolis, except as herinafter excepted (*c*).

Interpretation of terms.

4. In the construction of this Act the following words and expressions have the following meanings, unless excluded by the subject or context; that is to say:—

(*a*) The Gasworks Clauses Act, 1871, applies to all the companies enumerated in this Act, and the 36th section of the former Act imposing a penalty whenever the promoters neglect or refuse to supply gas to any occupier within the limits of the special Act, under such pressure as is prescribed, applies to a case where the company has improperly cut off the supply of gas; *Commercial Gas Company* v. *Scott*, L. R. 10 Q. B. 400.

(*b*) The City of London Gas Act, 1868, section 3, repeals, so far as it relates to the city of London this (2) section, as far as it incorporates the Gas Works Clauses Act, 1847, with respect to the amount of profit, or where it imposes any restriction in respect of the rate of dividend. The South Metropolitan Gaslight and Coke Company's Act, 1869, section 4 (sched.), contains a similar provision, so also the Commercial Gas Act, 1875, section 3. By the Gaslight and Coke Company's Act, 1868, s. 63, companies are empowered to lay pipes, &c., into, through, or against buildings, with consent of owner or occupier.

(*c*) See section 5 and schedule.

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The expression "gas company" or "gas companies" means and includes any and every company, and any person or persons, supplying gas within the limits of this Act:

The expression "local authority" includes the metropolitan board of works, vestries, and district boards appointed under an Act of the session of the eighteenth and nineteenth years of the reign of Her present Majesty, chapter one hundred and twenty, for the local management of the metropolis:

The word "inspector" or "inspectors" shall mean any metropolitan gas inspector or inspectors to be appointed under this Act:

The word "consumer" means a person receiving or entitled, in accordance with this Act, to receive a supply of gas from any gas company:

The word "the metropolis" has the same meaning as in the said Act of the eighteenth and nineteenth years of Her present Majesty, chapter one hundred and twenty:

The word "district" means, with respect to every gas company supplying gas wholly or in part within the metropolis, the district, so far as it is within the metropolis, within which the gas company are from time to time authorized to supply gas, and means, with respect to any person or persons not being a gas company, but supplying gas wholly or in part within the metropolis, the district within the metropolis within which he or they shall from time to time as a trade or business supply gas:

The word "street" includes square, court, alley, highway, lane, road, thoroughfare, and public passage or place:

The word "premises" includes public and private messuages, and other buildings, lands, and tenements whatsoever:

The word "the gasworks" means the works of the respective gas companies, and the works connected therewith:

The word "rate" includes all rents and other payments for a supply of gas:

The word "meter rent" includes all rents and other payments for the use of gas meters:

The word "magistrate" means any police or stipendiary magistrate acting in and for the district of the metropolis in which the matter referred to him arises, and in the city of London and the liberties thereof shall mean any justice of the peace for the city of London and the liberties thereof:

The words "common gas" shall mean gas of an illuminating power hereinafter defined of not less than twelve candles:

The words "cannel gas" shall mean gas of an illuminating power hereinafter defined of not less than twenty candles (*d*).

Limits of Act.

5. The limits of this Act shall be the metropolis: provided always, that this Act and the several clauses and provisions thereof shall not extend or apply or be construed to extend or apply to the several gas companies set forth and enumerated in the schedule annexed to this Act; provided also, that the districts severally specified and described in the Acts and instrument of incorporation respectively mentioned in the said schedule, or within which the said companies or any of them are now supplying gas (notwithstanding

(*d*) So much of this section as defines the meaning of the words "common gas" and "cannel gas" is repealed by section 3 of the Commercial Gas Act, 1875, as to that company.

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the said districts, or any portions thereof, are or may be within the limits of the metropolis as defined by this Act), shall not be included or deemed to be included in the expression "the metropolis," or any extension thereof which may hereafter be made, under the provisions of the hereinbefore mentioned Act of the eighteenth and nineteenth Victoria, chapter one hundred and twenty; provided also, that if the said companies or any of them shall supply gas in parts of the metropolis other than those within their respective districts as defined in the said schedule, then the provisions of this Act shall be held to apply to such companies respectively so far only as regards such extended limits as may be within the metropolis.

Sanctioning assignment of districts to gas companies to be subject to triennial revision.

6. The limits of each of the said companies shall be the respective districts supplied with gas by such companies as the same are defined upon four duplicate maps, signed by the Right Honourable Thomas Henry Sutton Sotheron Estcourt, and which maps have been severally deposited with the respective clerks of the peace for the counties of Middlesex, London, Surrey, and Kent; provided that at the expiration of three years next after the passing of this Act, and of every three years thereafter, Her Majesty's principal Secretary of State for the Home Department for the time being may, either upon the application and with the consent of any two or more of the said gas companies whose districts adjoin one another, make any alteration in the boundaries of such districts, or upon the application of any local authority, or upon the requisition of not less than twenty gas consumers within any district or districts proposed to be affected, and upon proof to his satisfaction being given that any of the said gas companies are not in a condition adequately to supply with gas their respective districts, or have substantially failed to fulfil the obligations imposed by this Act, may make such alterations in the boundaries of such districts, or admit any new company respectively, as he thinks proper; and all such alterations shall be certified on one or more maps, to be signed by the said Secretary of State, and deposited with one or more of the said clerks of the peace; and such last-mentioned map or maps shall be binding on all parties, and the provisions of this Act shall be held to apply to the several districts, when so altered, and to the several companies affected thereby, as fully and effectually as if no alteration in such districts had been made, and no other company or person than the company to whom such limits are for the time being assigned or shall hereafter be assigned shall supply gas for sale within the said limits, unless authorized by parliament so to do; provided that before proceeding to consider the necessity for altering any of the said districts the said Secretary of State shall cause at least one month's notice to be given of such application to all parties interested therein or affected thereby, and such notice shall state the day and hour when and the place where such application will be considered; and notices to be given to any gas company shall be left with the secretary or some other principal officer of the company, and notices to be given to any local authority shall be left with the clerk or some other principal officer of the said local authority.

On complaint as to quantity and quality,

7. If at any time complaints as to the quantity or quality of the gas supplied by any company be made to the said secretary of state (*a*) by memorial in writing from the metropolitan board of

(*a*) The South Metropolitan Gas Light and Coke Company Act, 1869,

works, or any vestry or district board of works, signed by their clerks respectively, or not less than twenty inhabitant householders paying rates for and supplied with gas by any such company, it shall be lawful for the said secretary, at any time within one month after the receipt of such complaint, to appoint a competent person as inspector to inquire into and concerning the grounds of such complaint, and report to the said secretary thereon.

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secretary of state may appoint a person as inspector to inquire and report (*b*).

8. The inspector so appointed as aforesaid shall give notice of his appointment in writing to the company, and at any time after twenty-four hours from the time of his giving such notice as aforesaid he shall have power to inspect and examine the gasworks of the company, and to inquire into and concerning the grounds of such complaint, and the company and their officers shall afford all reasonable facilities for such inspection, examination, and inquiry.

Power of inspector so appointed.

9. Any person obstructing such inspector in the due prosecution of such inspection, examination, or inquiry shall forfeit and pay any sum not exceeding ten pounds.

Penalty on obstructing inspector.

10. If after receipt of such report it shall appear to the said secretary that the said complaint is well founded, the said secretary shall give notice thereof in writing to the company.

Notice if complaint well founded.

11. After the receipt of such notice the company shall and they are hereby required, within a reasonable time, to remove the grounds of such complaint.

Company to remove ground of complaint.

12. Every gas company shall in all things obey the orders of the said secretary made in pursuance of this Act, and in default of their so doing they shall be liable to a penalty not exceeding fifty pounds for each offence.

Gas companies to obey orders of secretary of state.

13. All the costs, charges, and expenses of and incident to any inquiry and decision of the said secretary of state under this Act shall from time to time be borne and paid by such parties as the said secretary of state shall direct, and such decision may, upon an *ex parte* application, be made a rule of any of Her Majesty's superior courts of law at Westminster

Cost of altering district.

14. Every gas company from time to time supplying gas within any district shall, as to any premises or street within such district not already supplied with gas, and which shall lie within fifty yards of any existing mains, at their own expense, on being required by the owner or occupier of any premises within the district or in part within the district, who shall contract for not less than two years to

Gas companies to provide pipes, and supply gas and meters at prescribed rents (*c*).

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section 4, substitutes as to that company the board of trade for the secretary of state.

(*b*) The City of London Gas Act, 1868, repeals (so far as they relate to the city) this and the following sections to 12 inclusive. A similar provision is contained in the South Metropolitan Gas Light and Coke Company's Act, 1869, section 4, as to that company; and in the Imperial Gas Act, 1869, so far as relates to that company; so also in the Commercial Gas Act, 1875, section 3, as to that company.

(*c*) By the Commercial Gas Act, 1875, that company shall, notwithstanding anything in this Act, not be compelled to lay on gas for a stable, &c., where they do not supply gas to the house, unless the person requiring it agree that the consumption be at the rate of at least 10s. per

Section 14. pay gas rates in respect of such supply to an amount equal to twenty per cent. upon the outlay, provide and lay all proper and sufficient communication, service, and other pipes up to the premises of such owner or occupier to communicate with the gas company's mains, and shall, if so required by the owner, occupier, or local authority, furnish him or them, at the rate prescribed by this Act, with a supply of gas for the purpose of being used in or on the premises, or for lighting the street, and if so required by the owner or occupier, furnish him with one or more meters for ascertaining the quantity of gas consumed; provided that the gas company shall not be bound to supply more than one meter for each consumer occupying a separate dwelling or apartment, nor any meter exceeding a five-light meter; provided also, that the meter rent which the said company shall be entitled to claim for such meter shall not exceed ten per cent. on the net cost of such meter; provided that it shall not be lawful for any company not charging a meter rent on the first day of January one thousand eight hundred and sixty to charge such rent within their district until after the first day of January one thousand eight hundred and sixty-two.

Security to be given to gas company, if required (*a*).

15. Provided that the owner or occupier, if so required in writing by the gas company or any of their officers, shall, before he is entitled to have the pipes provided and laid, or to have a supply of gas or of meters furnished, give to the gas company such security for the payment of the rate for the gas to be supplied to him, and of the meter rent for every meter to be supplied to him, as he and the gas company agree on.

Differences as to security to be determined by a magistrate.

16. Provided, that if the owner or occupier and the gas company cannot agree thereon, the security to be given shall be determined by a magistrate; and any single magistrate shall, on the application of the owner or occupier and the gas company, or either of them, determine the nature and amount of the security to be given; and the security may, as the magistrate thinks fit, be the deposit with the gas company, or with any person approved by the magistrate, or the prepayment to the gas company, of a sum of money or any other security which the magistrate thinks sufficient and reasonable; and the determination of the magistrate shall be binding on all parties, and final: Provided that if the security be the deposit with the gas company of a sum of money, the gas company shall pay interest thereon to the consumer at such rate as the magistrate shall determine.

Penalty on gas company

17. If the gas company, not being entitled to require or not having

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annum, or pay the expense of the service pipe and meter. Under a special Act empowering a gas company to levy a distress for sums due for gas described as "rents," it was held that the company were not landlords within section 34 of Bankruptcy Act, 1869, and that the distress was merely a legal process against the estate of the debtor in respect of a provable debt; *ex parte Hill, re Roberts*, L. R. 6 Ch. Div. 63.

(*a*) This and the 16th section shall, by the Commercial Gas Act, 1875, as to that company, apply to the supply of gas or of meters to a person succeeding as tenant of a house, &c. Where at the time of his entering, gas was consumed as therein provided, under the Gas Light and Coke Company's Act, 1872, it was decided that an incoming tenant was not liable to payment of arrears due from the preceding tenant; *Gas Light and Coke Company* v. *Mead*, 40 J. P. 662.

Section 17.

failing to provide pipes or supply of gas or meters.

required any security, wilfully fail for seven days after being thereunto required in writing by the consumer, or where the security agreed on or determined by the magistrate is given, shall wilfully fail for fourteen days thereafter to provide and lay all proper and sufficient communication, service, and other pipes, or to furnish a supply of gas, or to furnish any meter, pursuant to the provisions of this Act, then and in every such case the gas company shall, on a summary conviction before a magistrate, forfeit and pay to the consumer not exceeding forty shillings for every day after the expiration of seven or fourteen days respectively during which the failure continues.

Gas to be consumed by meter if required by companies.

18. Provided, that every private consumer shall, if so required in writing by the gas company, consume the gas by meter, but any consumer may, if he thinks fit, provide his own meter.

Gas companies may contract for supply.

19. Subject to the provisions of this Act, every gas company, from time to time, may enter into any contract with any owner, occupier, or local authority for all or any of the following purposes; that is to say, for supplying him or them with gas, and with pipes, burners, meters, lamps, lamp posts, and other apparatus, and for the repair and cleansing and for the lighting and extinguishing thereof, in such manner and on such terms and conditions as the parties agree.

Contracts valid though not under seal.

20. Provided, that, notwithstanding its being required by any Act of parliament or otherwise that the gas company's contracts shall be under seal, every contract of the gas company entered into in accordance with this Act shall without seal be binding on them, if the contract be signed by at least two of their directors, or by their secretary or other officer by the authority of at least two of their directors.

Restrictions on contracts with gas companies.

21. Provided, that no contract for any of those purposes shall contain any term or condition contrary to any of the provisions of this Act, or for giving in case of difference the sole arbitrament thereon to the gas company or any officer or person who is or has been employed by them, or who may have a pecuniary interest in such company, or for requiring any notice by a consumer discontinuing his supply of gas or meter which shall make him liable to pay more than one month's rate or meter rent after the time of the service of the notice, or which shall entitle the gas company, except for breach of any of the provisions of this Act, to discontinue any supply of gas by less than one month's notice in writing to the consumer, unless the rate due for gas shall be in arrear, in which case three day's notice in writing to the consumer shall be sufficient (*b*).

Gas companies to light streets when required by local authority.

22. The gas company shall well and effectually light all public lamps in all streets which they are required by the local authority to light, and shall, according to the terms of their contract, supply to the local authority so much gas as they require for their public lamps, provided that the gas company shall not be compelled to light any street with lamps at a greater distance from each other than seventy-five yards.

(*b*) The gas companies mentioned in this Act are subject to the Gas Works Clauses Act, 1871, and are liable to conviction for discontinuing the supply of gas without sufficient reason; *Commercial Gas Company* v. *Scott*, 40 J. P. 214.

Section 23.

Local authorities may provide lamp posts and lamps (*a*).

23. The local authority may provide and keep in repair their own public lamp posts and lamps, and apparatus connected therewith, and, in case of their electing to burn by meter, light and extinguish the lamps, and defray the expenses thereof.

Service pipes to be fully charged with gas.

24. Every gas company shall, unless prevented by necessary repairs or unavoidable accident, at all times keep all their branch or service pipes fully charged with gas, and the stopcocks so turned as not to prevent the branch or service pipes from being at all times filled with gas.

Illuminating power and purity of gas (*b*).

25. The quality of the common gas supplied by any gas company shall be, with respect to its illuminating power at a distance as near as may be of one thousand yards from the works, such as to produce from an Argand burner having fifteen holes and a seven-inch chimney, consuming five cubic feet of gas an hour, a light equal in intensity to the light produced by not less than twelve sperm candles of six to the pound, each burning one hundred and twenty grains an hour, and the quality of cannel gas supplied by any gas company shall with respect to its illuminating power at the distance aforesaid be such as to produce from a batswing or fishtail burner consuming five feet of gas per hour a light equal in intensity to twenty such sperm candles, and each such gas shall with respect to its purity be so far free from ammonia and sulphuretted hydrogen that it shall not discolour either turmeric paper or paper imbued with acetate or carbonate of lead, when those tests are exposed to a current of gas issuing for one minute under a pressure of five-tenths of an inch of water, and shall not contain more than twenty grains of sulphur in any form in one hundred cubic feet of gas: Provided that any gas company, and the local authorities of the district supplied by such company, shall be at liberty to agree upon any other or different test by which to ascertain the purity of the gas, or to vary the amounts of ammonia or sulphur in any form hereinbefore allowed, and thereupon the company shall be thenceforth liable to have the purity of their gas tested in the manner so prescribed.

Penalty for deficient illuminating power or impurity.

26. If the gas supplied by the gas company be at any time of less illuminating power or of less purity than according to this Act it ought to be, the gas company shall for every such offence, on a summary conviction before a police magistrate, forfeit a sum not exceeding fifty pounds, and also, in addition to that penalty, and whether

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(*a*) See Imperial Gas Act, 1869, section 74; Commercial Gas Act, 1875, section 68; City of London Gas Act, 1868, section 85; and South Metropolitan Gas Light and Coke Company's Act, 1869, section 67, as to the use of street lamp governors and access thereto by the local authority.

(*b*) The City of London Gas Act, 1860, repeals (so far as they relate to the city) this and the following sections to 34 inclusive. A similar provision is contained in the South Metropolitan Gas Light and Coke Company's Act, 1869, section 4; also in the Imperial Gas Act, 1869; so also in the Commercial Gas Act, 1875.

It was decided in the *Gas Light and Coke Company* v. *The Vestry of St. George's, Hanover Square*, 41 L. J. Q. B. 360, that the Gas Light and Coke Company's Act, 1868, and the City of London Gas Act, 1868, did not repeal the provisions of this Act as to the purity and quality of the gas, and that the gas company remained subject to those provisions as well as to those contained in the later Acts.

that penalty be recovered or not, a further sum of ten pounds for every day after notice in writing from the local authority during which the offence continues: Provided that such police magistrate shall not convict under this section if it shall be proved to his satisfaction that such defect of gas was occasioned by any unavoidable cause or accident. Section 26.

Appointment by local authority of examiner of gas.

27. Every local authority taking any supply of gas according to this Act shall provide all proper and sufficient apparatus, machinery, and instruments for testing the illuminating power and purity of the gas, and from time to time shall appoint, and out of any funds applicable by them for their local purposes may pay, a chemical examiner or gas engineer, or other competent person to be an examiner for the purposes of this Act; and every gas company shall, within six months after the passing of this Act, cause to be erected in some convenient place, as near as may be to one thousand yards from their works (such place, in case of dispute between the company and the local authority to be fixed by a police magistrate, upon the application of either party, after hearing the parties thereon), an experimental meter furnished with a suitable burner, capable of consuming five cubic feet of gas per hour, with other necessary apparatus for testing the illuminating power of the gas.

Examination of gas and report thereon.

28. The examiner shall, on giving three hours notice to the secretary or engineer of the company, have access at all times to such experimental meter, and when and so often as is necessary or as he is so directed by the local authority appointing him shall examine the illuminating power and the purity of the gas supplied, and shall present to the local authority, so often as they require, a report stating the number of examinations on which the report is founded, and the maximum, minimum, and average illuminating power and purity, or the illuminating power and purity from day to day or at longer intervals of the gas supplied during the whole period to which the report relates, with such other information and remarks thereon as may be deemed necessary.

Two or more local authorities may join in the appointment.

29. Provided, that two or more local authorities, if they think fit, may join in providing the apparatus, machinery, and instruments, and in appointing and paying the examiner, and he shall make his reports to every local authority so joining in appointing and paying him.

Complaint to a magistrate as to supply of gas.

30. The examiner, on payment to him of a fee of ten shillings and sixpence by any consumer, shall, at his request, examine and report to him on the illuminating power and the purity of the gas supplied as hereinbefore mentioned; and any consumer may make complaint to any magistrate with respect to the illuminating power or purity of the gas supplied to the complainant, and the magistrate may entertain and hear the complaint, and proceed thereon according to the provisions of this Act.

Hearing on report.

31. Any magistrate may direct that notice be given to the complainant and the gas company to appear and be heard on the complaint, at such time as he appoints, and each party shall thereupon appear and may be heard before a magistrate, by themselves, their counsels, attorneys, or agents.

Order on hearing.

32. Where on the hearing, and whether or not the gas company

Section 32. have appeared, it appears to the magistrate that the complaint or any part thereof is well founded, he shall make an order declaring that the same is well founded, and ordering the gas company to pay any penalty or penalties thereby incurred, and to remove within a reasonable time the grounds of complaint, and he may by the order direct that any specific Acts shall be done by the gas company for removing the grounds of complaint, and may make any order as to costs; and all orders so made shall be final and binding on all parties.

Gas company to obey order.

33. Where the gas company are served with any order so made they shall, within the time limited by the order, remove the grounds of complaint thereby declared to be well founded, and pay the penalty or penalties, and the damages (if any) and costs (if any) thereby ordered to be paid by them.

Gas companies to afford facilities for examination under this Act.

34. The gas company, and their officers, agents, and servants, and, where there is any complaint made, the complainant, shall afford to the examiner appointed by the local authority all reasonable facilities for the respective inspection, examination, and inquiry; and every person obstructing any such examiner so appointed in the exercise of his duties under this Act shall for every such offence forfeit not exceeding ten pounds.

Limit of charge for gas and meters.

35. After the thirty-first day of December, one thousand eight hundred and sixty no gas company shall, except under existing contracts, demand or take for any gas or five-light meter supplied by them any sum of money exceeding the rate or meter rent by this Act authorized.

Determination of existing contracts.

36. All contracts made or existing before the first of January one thousand eight hundred and sixty, between any of the gas companies included in this Act and any local authority, for or relating to the supply of gas, shall terminate on the first day of February one thousand eight hundred and sixty-two, and thereafter the provisions of this Act in all particulars shall apply to such company; provided that from the time of the passing of this Act until the said first day of February one thousand eight hundred and sixty-two the provisions of this Act relating to price, purity, and illuminating power of gas, shall not apply to any such company, unless such company shall elect to adopt them.

Limit of charge for gas supplied to public lamps (*a*).

37. The gas company shall not charge a higher price by the one thousand cubic feet for gas supplied to any local authority than the lowest rate by the one thousand cubic feet from time to time charged by them to any private consumers, otherwise than by special contract in writing, in the district supplied by the gas company.

Difference to be settled by arbitration.

38. If any difference arise between any local authority and the gas company with respect to any alteration in the test, or to the rate to be charged for gas supplied or for lighting any public lamp, the dif-

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(*a*) This section is repealed by the City of London Gas Act, 1868, so far as it relates to the city, and by the South Metropolitan Gas Light and Coke Company Act, 1869, so far as concerns that company, also so far as relates to the company by the Imperial Gas Act, 1869. This and the 38th section are repealed by the Commercial Gas Act, 1875, so far as relates to that company.

ference shall be referred to and be determined by arbitration in the manner prescribed by the "Companies Clauses Consolidation Act, 1845" (*b*), with respect to the settlement of disputes by arbitration. Section 38.

Incoming tenant not to pay arrears of outgoing tenant, unless by express agreement.

39. In case any consumer leave the premises where gas was supplied to him without paying to the gas company the rate or meter rent due from him, the gas company shall not require from the next tenant of the premises payment of the arrears so left unpaid unless the incoming tenant agreed with the defaulting consumer to pay the arrears; but the gas company shall, notwithstanding any such arrears, in the absence of collusion between the outgoing and incoming tenant, supply gas to the incoming tenant, as required by this Act, on being required by him so to do.

Appeal by consumers to home secretary on rise of price of gas (*c*).

40. No company shall advance the price of gas above the rate taken by such company on the first day of January one thousand eight hundred and sixty, whenever such rate is at or above four shillings and sixpence per one thousand cubic feet, unless there has been such increase in the cost of gas, or any other circumstances affecting the company, as will warrant such advance: Provided always, that before raising the gas rate in any district the gas company supplying such district shall give notice of their intention to the local authorities of the district in some newspaper circulating within the district for two consecutive weeks at least one month before such alteration in the gas rate shall be made; and in case any local authority shall, within such month, dissent from such alteration, it shall be determined by arbitration in the manner hereinbefore mentioned whether such alteration shall be allowed: Provided always, that no gas company shall charge for common gas supplied by them any sum exceeding five shillings and sixpence for every one thousand cubic feet, or for cannel gas any sum exceeding seven shillings and sixpence for every one thousand cubic feet; provided also, that any company shall be at liberty to change the kind of gas from time to time supplied by such company, whether common or cannel gas, on giving three months' notice of their intention so to do; and upon the expiration of such notice the company shall thenceforth supply gas pursuant thereto under the provisions of this Act until any like notice shall be given for a further change; and when the company shall change the supply from cannel gas to common gas, the rate shall be reduced so as not to exceed four shillings and sixpence per thousand cubic feet, except under the circumstances and in the manner hereinbefore set forth.

Home secretary may issue form

41. The said secretary of state may at any time issue a form of accounts to be filled up by each of the said gas companies, and such accounts shall state precisely the amounts of the capital of each com-

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(*b*) By the City of London Gas Act, 1868, this section shall (so far as relates to the City of London) be read as if the Lands Clauses Consolidation Act was therein mentioned instead of the Companies Clauses Consolidation Act, 1845.

The South Metropolitan Gas Light and Coke Companies Act, 1869, section 69 contains a similar enactment.

(*c*) This and section 41 are (so far as they relate to the City) repealed by the City of London Gas Act, 1868, and by the South Metropolitan Gas Light and Coke Company's Act, 1869, section 4, and schedule (so far as relates to that company). Also by the Imperial Gas Act, 1869, as to that company. This and the following sections to 44 inclusive are repealed by the Commercial Gas Act, 1875, as to that company.

Section 41.

of accounts to be filled up by gas companies.

pany, and the Acts of parliament or other authority under which the same is raised, and such other information as the said secretary may require, in order to enable him to ascertain the actual state and condition of the concerns of such company; and every gas company shall, after receiving notice in writing signed by the said secretary of the form so required by him to be filled up within two months after the general meeting of the company fill up and forward to the said secretary an annual statement of accounts in the form so prescribed, and any company which shall fail to furnish such account shall be liable on conviction before a magistrate to forfeit any sum not exceeding fifty pounds; and such statement shall be laid by the secretary of state before both houses of parliament every year.

Gas companies to cause maps of their districts to be made.

42. Every gas company shall within one year after the passing of this Act cause a map to be made of the district within which their mains or district mains then lie, on a scale not less than six inches to a mile, and shall cause to be marked thereon the line of all their then existing mains and district mains, and shall once in every year correct such map and make additions thereto as will show the line of all their then mains and district mains as aforesaid.

As to deposit and inspection of the maps.

43. Every map, or a copy thereof, so made by or for each company, with the date expressed thereon of the last time when it was so corrected, shall be deposited, certified by their secretary, or clerk by writing under his hand to be a true copy thereof, with the respective clerks of the peace for the counties in which such mains lie, and who are hereby required to receive and keep in safe custody the same; and such maps so deposited shall at all reasonable times be open to the inspection of all local authorities and consumers, and their respective agents, and they respectively may take copies of or extracts from the same; and every gas company wilfully failing to comply with any of the requirements of this Act with respect to maps, and every person having charge of such maps who shall refuse to allow any person to inspect and take copies of or extracts from such maps, shall for every such offence forfeit a sum not exceeding ten pounds.

Charge for inspection of map.

44. Every clerk of the peace with whom any map shall be deposited under the provisions of this act may charge and take the sum of one shilling for every inspection of such map, and the further sum of two shillings and sixpence for every extract from or copy taken of such map.

Secretary of state may direct proceedings by the attorney-general against gas companies (*a*).

45. If and whenever it appears to the secretary of state that any of the provisions of this Act have been violated or not complied with on the part of any gas company, or that the gas company are acting in a manner unauthorized by law, and if it appear to him that it would be for the public advantage that the gas company should be restrained from so acting, or compelled to do any act for remedying the wrongful

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(*a*) A gas company acting under this Act and the Gas Works Clauses Consolidation Act, 1867, section 29, are not justified in causing a nuisance, even if their gas cannot be made of the requisite purity without so doing; *Attorney-General* v. *Gas Light and Coke Company*, L. R. 7 Ch. D. 217. *Quære* whether on the construction of the Acts, the companies were under an obligation to supply gas.

act done by them, the secretary of state may certify the same in writing to Her Majesty's attorney-general, and thereupon he, if he be so advised, shall proceed by information, bill, or action, or other such proceeding at law or in equity, as the case requires, to restrain the wrongful acting or to compel the doing of the acts for remedying the wrongful acts; provided always, that the secretary of state shall not give the certificate at a period exceeding one year after the committing of the offence specified in the certificate. Section 45.

Recovery and application of penalties.

46. Every penalty imposed by this Act, the recovery and application of which is not otherwise specially provided for by this Act, shall be recovered on summary conviction before a magistrate, and be enforced, accounted for, and paid to the receiver of the metropolitan police district, and shall be apportioned in the same manner as penalties or fines, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are by the Act of the third year of Her present Majesty, for regulating police courts in the metropolis, directed to be recovered, enforced, accounted for, paid, and applied (*b*); and every order or conviction of any magistrate in respect of any such penalty shall be subject to the like appeal, and upon the same terms, as is by that Act provided in respect of any order or conviction of any magistrate; and every magistrate by whom any order of conviction is made under this Act shall have the same power of binding over the witnesses examined, and the witnesses shall be entitled to the same allowance of expenses as they would be entitled to in case the order, conviction, and appeal were made under that Act.

Jurisdiction of magistrates for purposes of Act.

47. Every magistrate shall, for the purposes of this Act, have full jurisdiction and full powers and authorities, over the parties respectively, and with respect to making orders on the parties respectively, and otherwise, and as to costs, and may issue every such summons, warrant and other process, and may take such other proceedings as he thinks requisite; and the service of any summons, notice, order, or other process in the matter on such person, or in such manner as a magistrate directs, shall be good service thereof; and every magistrate may proceed singly in the execution of this Act in such manner as he thinks proper.

For the protection of water companies.

48. Nothing in this Act contained shall extend or be construed to extend to authorize or empower any gas company to interfere with or abridge any of the rights or privileges of any company established for the supply of water to the inhabitants of any parish or place within the metropolis; and every gas company shall be answerable for any damage, spoil, injury, or mischief which shall be done to any of the pipes, works, or property of any such water company, or which shall or may be sustained by such water company by reason or in consequence of any act, matter, or thing to be done or executed by such gas company, or any of their servants, agents, or workmen.

For laying pipes to convey gas.

49. Whenever any gas company, or their servants, agents or workmen, shall dig or sink any trench for laying any new mains or pipes, other than service pipes, for the conveyance of gas or other apparatus near to which any pipe belonging to any water company for conveying water, or any branch or service pipe for the supply of water to

(*b*) See Act for further improving the police in and near the metropolis, 2 & 3 Vict. c. 47, sections 22 and 77, and 2 & 3 Vict. c. 71, s. 47.

Section 49.

any dwelling house or buildings, shall be laid, such gas company, their servants, agents, or workmen, shall give four hours previous notice thereof in writing to the manager or chief clerk, or secretary or engineer, of such water company, such notice to be delivered at the principal office of the company between the hours of ten in the morning and four in the afternoon, and shall, under the inspection of the manager or chief clerk, secretary or engineer for the time being of such water company, protect and secure every such water pipe from any injury, and shall also repair any damage that shall be done to such pipe, and in default of repairing such damage the gas company shall for each such default forfeit and pay to the secretary for the time being of such water company, for the use of the said water company, any sum not exceeding five pounds, and also the costs and expenses which shall have been incurred by the said water company in protecting and securing any such water pipe, or in repairing or making good any injury that may have been done thereto by the means aforesaid, such costs and expenses to be ascertained by any justice, and to be recovered in the same manner as any expenses or penalty under this Act may be recovered.

Mode of laying pipes.

50. All pipes hereafter to be laid by any gas company for the conveyance of gas shall be laid at the greatest practicable distance from the nearest part of any pipe then laid down by or by order of any water company for the conveyance of water, and wherever the width of the carriage way or footpath will allow thereof shall be laid at the distance of four feet at least from the nearest part of any such water pipe, unless in cases where it shall be unavoidably necessary to lay the gas pipe across or nearer to any water pipe, in which case the said gas pipe shall, wherever practicable, be laid over and above the said water pipe, at the greatest practicable distance therefrom, and shall form therewith a right angle, or as near thereto as the situation will admit; and in every such case the said gas pipe so crossing the said water pipe shall be at least nine feet in length, so that no joint of any gas pipe shall be nearer to any water pipe than four feet at the least, where the width of the road, street, square, market place, lane, alley, passage, court, or other place will admit; and every such gas pipe so crossing the water pipe shall for the whole length thereof be sufficiently bedded in with good sound clay or other fit materials of a proper consistence, and well worked and rammed into the trench all round the said gas pipe, and in laying down any such gas pipe the gas company shall use such joints as are for the time being of the most improved description for preventing the leakage of gas, and shall in no case join two or more gas pipes together previous to their being laid in the trench, but shall lay each pipe as near as may be in its place in the trench, and shall in such trench properly form the jointing with the other pipes to be added thereto with proper and sufficient materials, and shall also, whenever practicable, lay and well and sufficiently bed each joint of the main gas pipes and also the joints or screws of the branch or service gas pipes connecting with the main gas pipes, and also the joints of the service or branch pipes for conveying the gas from the main gas pipes to the houses and other buildings, and all other joints, inlets, apertures, or openings which are or shall or may be made in any of the main gas pipes belonging to the company, in such manner and of such material as shall, as far as reasonably practicable, prevent leakage.

To prevent further contamination

51. Whenever the water which shall be supplied by any water company shall be contaminated or affected in any way whatsoever by the gas of any gas company, such gas company shall, within twenty-

Section 51.

of water by gas. (*a*)

four hours next after notice thereof in writing, signed by any one of the directors or by the secretary for the time being of such water company, or by any person using the water of such water company, and left at the office of such gas company, cause measures to be taken effectually to prevent such gas from contaminating or affecting the water of such water company; and in case such gas company shall not within forty-eight hours next after any such notice so left as aforesaid use all reasonable means to effectually remove the cause of such complaint, and prevent all such contamination whereof notice shall be given as aforesaid, then and in every such case such gas company shall on each complaint whereof notice shall be given as aforesaid forfeit and pay to the secretary of such water company, for the use of such water company, the sum not exceeding ten pounds for each day during which the water supplied by such water company shall remain contaminated or affected by the gas of such gas company; and every such penalty or forfeiture may be recovered for the use of such water company in the same manner as any other penalty or forfeiture imposed by this Act may be levied and recovered.

For ascertaining if the water is contaminated.

52. And whereas it may become a question upon such complaint as aforesaid whether or not the water supplied by any water company within the metropolis be contaminated or affected by the gas of the gas company: Be it enacted, that in every such case it shall be lawful for any such water company to dig to and about and to search and examine the mains, pipes, conduits, and apparatus of the gas company adjacent to the pipes of such water company for the purpose of ascertaining whether or not such contamination proceed or be occasioned by the gas of such gas company, giving twenty-four hours previous notice in writing signed by one of the directors or by the secretary for the time being of such water company, and left at the head office of such gas company, of the intention of such water company so to dig, search, and examine as aforesaid, and of the time and place or places when and where such digging, search, and examination is intended to be made; and if it shall appear that the said water has been contaminated, and that there has been any escape of gas whereby such contamination has been produced, then and in every such case the costs and expenses of the said digging, search, and examination, and of the repair of the street, road, or place which shall be taken up or disturbed, shall be borne and paid by such gas company, which costs and expenses shall be ascertained and determined, if necessary, by any justice, and may be levied and recovered in the same manner as any penalty or forfeiture imposed by this Act may be levied and recovered: Provided always, that if upon such examination it shall appear that such contamination has not arisen from any escape of gas from any of the mains, pipes, or conduits of the gas company to which such notice shall have been given, then and in every such case the water company by whom or on whose behalf such examination and search shall have been made shall bear and pay all the costs, charges, and expenses of and incident to such examination and search, and shall also make good to such gas company any damage which may be occasioned to their mains, pipes, conduits, or apparatus by such search, and also any injury or damage which may be done in

(*a*) See penalties for fouling water in Gas Works Clauses Act, 10 Vict. c. 15, sections 21, 22, and 23; Nuisances Removal Act, 1855, section 23, *et seq.*; and Public Health Act, 1875, sections 68 and 69. As to pollution of a disused well by works of a gas company, refer to *Millington* v. *Griffiths*, 30 L. T. (N.S.) 65.

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or about any of the streets, roads, or places which shall be broken up or disturbed in such search, the amount of such damage to be ascertained and determined, if necessary, by any justice, and to be levied and recovered in the same manner as any penalty or forfeiture under this Act may be levied and recovered.

Appropriation of penalties in the city of London.

53. All penalties or sums of money ordered and adjudged within the city of London and the liberties thereof to be paid under this Act, and not otherwise appropriated, shall be payable to the Chamberlain of the city of London, in aid of the expenses of the police of the said city.

Saving rights of metropolitan board of works, vestries, and others.

54. Nothing in this Act contained shall avoid, prejudice, or impair any of the powers now exercised by or vested in the metropolitan board of works, or in the commissioners of sewers of the city of London and the liberties thereof, or any powers now vested in any local authority (*a*) within the metropolis, or any powers now exercised or possessed in respect of the manufacture or supply of gas within the metropolis by any railway company, or by any other person or persons making or supplying gas for his or their own use, and not making or supplying gas to the public as a trade or business (*b*): Provided that if the said local authority shall refuse or delay their consent to any company to lay down mains or pipes in accordance with the provisions of this Act, it shall be lawful for the said Secretary of State under his hand to authorize the same to be laid down without such consent; and after the date of the application by such company to the said Secretary of State for such consent no penalty shall be incurred by any default of such company, so far as it is occasioned by such refusal only.

Saving general jurisdiction of courts of law and equity.

55. Provided, that no special remedy or provision for giving relief to any person given by this Act shall prejudice or diminish the general jurisdiction of any of Her Majesty's superior courts of law or equity over or with respect to the Acts or defaults in respect of which the special remedies or provisions are so given.

Expenses of Act.

56. The costs, charges, and expenses of and incident to the passing of this Act, and preliminary thereto, shall be paid by the metropolitan board of works (*c*) out of such funds as may be and shall be levied by their authority from the several vestries and district boards, in proportion to their annual ratable valuable, and such amount shall be included in the precept of the metropolitan board under the authority of the Act of the eighteenth and nineteenth years of Her present Majesty, chapter one hundred and twenty, for the local management of the metropolis.

(*a*) See as to consent of vestries and district boards in case of works by companies, 18 & 19 Vict. c. 120, section 109, *et seq.* By the Metropolitan Subways Act, 1868, the metropolitan board are empowered to require companies, &c., to use subways, and section 5 imposes penalties for contravention of that provision, and authorizes a board, whether having control of the surface or not, to remove pipes, &c. See the Act, *post.*

(*b*) As to the effect of this saving refer to *Imperial Gas Light & Coke Company* v. *West London Junction Gas Company*, 14 W. R. 1019; 15 L. T. (N.S.) 66.

(*c*) A parliamentary agent, who had been retained by certain persons to obtain this Act, was held not entitled to maintain an action against the metropolitan board to recover the costs attending the passing of this Act; *Wyatt* v. *Metropolitan Board of Works*, 31 L. J. C. P. 217.

57. All the expenditure from time to time made or incurred by any local authority under the authority of this Act may and shall be defrayed by the local authority out of any rate raised under the provisions of the Act of the session of the eighteenth and nineteenth years of Her present Majesty, chapter one hundred and twenty, for the local management of the metropolis.

Section 57.
Expenditure of local authorities under this Act.

SCHEDULE TO WHICH FIFTH SECTION OF THE FOREGOING ACT REFERS.

Name of Gas Company.	Special Act or Instrument of Incorporation.	District.
The Crystal Palace District Gas Company.	The Crystal Palace District Gas Company's Act, 1858.	The District defined by their said special Act.
The Woolwich, Plumstead, and Charlton Consumers Gas Company.	The Woolwich, Plumstead, and Charlton Consumers Gas Act, 1855.	The District defined by their said special Act.
The Woolwich Equitable Gaslight and Coke Company.	The Woolwich Equitable Gas Company's Act, 1855.	The District defined by their said special Act.
The Wandsworth and Putney Gaslight and Coke Company.	The Wandsworth and Putney Gas Act, 1856.	The District defined by their said special Act.
The Brentford Gas Company.	The Brentford Gas Act, 1858.	The district now actually supplied by the company.
The Victoria Docks Gas Company.	The Victoria Docks Gas Act, 1857.	The district defined by their said special Act.
The Eltham Gaslight and Coke Company, Limited.	Articles of Association under the Joint Stock Company's Act, 1856.	The parish of Eltham.
The West Ham Gas Company.	The West Ham Gas Company's Act, 1856.	The district defined by their said special Act.
Mitcham, Merton, and Tooting Gas Company.	Articles of Association under 7 & 8 Victoria, cap. 110.	The parishes and villages of and adjacent to Mitcham, Merton, and Tooting.

AN ACT

FOR THE SAFE KEEPING OF PETROLEUM AND OTHER SUBSTANCES OF A LIKE NATURE.

34 & 35 VICT. CAP. 105.

21ST AUGUST, 1871.

WHEREAS it is expedient to consolidate and amend the law relating to the safe keeping of petroleum and other substances of a like nature:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Short title of Act.

1. This Act may be cited as "The Petroleum Act, 1871."(*a*)

Interpretation of certain terms in the Act: "Borough:"

2. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter assigned to them; (that is to say,)

The term "borough" means—

In England any place for the time being subject to the provisions of the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, "to provide for the regulation of municipal corporations in England and Wales," and the Acts amending the same;

In Scotland any royal burgh and any burgh or town returning or contributing to return a member or members to serve in parliament;

(*a*) By the 17th section of the present Act, the Acts mentioned in schedule 2 are repealed to the extent therein mentioned. The Acts specified are 25 & 26 Vict. c. 66, an Act for the safe keeping of petroleum, which is wholly repealed; the 29 & 30 Vict. c. 69, the Carriage and Deposit of Dangerous Goods Act, 1866, of which sections 8 and 9 are repealed; and 31 & 32 Vict. c. 56, the Petroleum Act, 1868, the whole of which is repealed. The 8th section of 29 & 30 Vict. c. 69, extended the Act of 25 & 26 Vict. c. 66, to nitro-glycerine, save that so much of the Act as specified the maximum quantity of petroleum to be kept without a license was not to apply in the case of nitro-glycerine. The 9th section extended the same Act to any substance for the time being declared by any order in council to be specially dangerous. See now the Explosives Act, 1875, *post*. The duration of the present Act was for one year, *i.e.* to one year to Oct. 1, 1872. It has since been continued by annual statutes, of which the last was the 41 & 42 Vict. c. 70, Sched. I.

Section 2.

In Ireland any place for the time being subject to the provisions of the Act of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, "for the regulation of municipal corporations in Ireland, and the Acts amending the same :"

The term "person" includes a body corporate : "Person :"

The term "secretary of state" means one of Her Majesty's principal secretaries of state : "Secretary of State :"

The term "lord lieutenant" means the lord lieutenant of Ireland or the lords justices or other chief governors or governor of Ireland for the time being : "Lord lieutenant :"

The term "harbour" means any harbour properly so called, whether natural or artificial, and any port, haven, estuary, tidal river or other river, canal or inland navigation navigated by sea-going ships, and any dock, pier, jetty, or other works in or at which ships do or can ship or unship goods or passengers : "Harbour :"

The term "harbour authority" includes any persons or person being or claiming to be proprietors or proprietor of or intrusted with the duty or invested with the power of improving, maintaining, or managing any harbour : "Harbour authority :"

The term "ship" includes every description of vessel used in navigation, whether propelled by oars or otherwise : "Ship :"

The term "Summary Jurisdiction Acts" means as follows : "Summary Jurisdiction Acts :"

As to England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Acts amending the same ;

As to Scotland, "The Summary Procedure Act, 1864 ;"

As to Ireland, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district ; and elsewhere in Ireland, "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same :

The term "court of summary jurisdiction" means and includes any justice or justices of the peace, sheriff or sheriff substitute, metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to, or to proceedings before whom the provisions of the Summary Jurisdiction Acts are or may be made applicable : "Court of summary jurisdiction :"

The term "county rate" means as regards Scotland the county general assessment leviable in pursuance of "The County General Assessment (Scotland) Act, 1868," and as regards Ireland the grand jury cess. "County rate." 31 & 32 Vict. c. 82.

3. For the purposes of this Act the term "petroleum" includes any rock oil, Rangoon oil, Burmah oil, oil made from petroleum, coal, schist, shale, peat, or other bituminous substance, and any products of petroleum, or any of the above-mentioned oils ; and the term "petroleum to which this Act applies," means such of the petroleum Definition of "petroleum" and application of Act (*b*).

(*b*) By section 14 this Act may be extended by order in council to any substance, and the Act, or the part of it specified in the order, shall during the continuance of the order have effect as if such substance had been included in the definition of petroleum to which the Act applies.

Section 3.

so defined as, when tested in manner set forth in schedule one to this Act, gives off an inflammable vapour at a temperature of less than one hundred degrees of Fahrenheit's thermometer.

Bye-laws as to ship carrying petroleum.

4. Every harbour authority (*a*) shall frame and submit for confirmation to the board of trade bye-laws for regulating the place or places at which ships carrying petroleum to which this Act applies are to be moored in the harbour over which such authority has jurisdiction, and are to land their cargo, and for regulating the time and mode of, and the precautions to be taken on, such landing. The harbour authority shall publish the bye-laws so framed with a notice of the intention of such authority to apply for the confirmation thereof. The board of trade may confirm such bye-laws with or without any omission, addition, or alteration, or may disallow the same.

Every such bye-law when confirmed shall be published by the harbour authority, and may be from time to time altered or repealed by a bye-law made in like manner. Bye-laws under this section shall be published in such manner as the board of trade may from time to time direct.

If at any time it appears to the board of trade that there is no bye-law for the time being in force under this section in any harbour the board of trade may, by notice, require the harbour authority of such harbour to frame and submit to them a bye-law for the purposes of this section, and if such harbour authority make default in framing a bye-law and obtaining the confirmation thereof within the time limited by such notice the board of trade may make a bye-law for the purposes of this section, and such bye-law shall have the same effect as if it had been framed by the harbour authority and confirmed by the board of trade.

Where any ship or cargo is moored, landed, or otherwise dealt with in contravention of any bye-law for the time being in force under this Act in any harbour, the owner and master of such ship, or the owner of such cargo, as the case may be, shall each incur a penalty (*b*) not exceeding fifty pounds for each day during which such contravention continues, and it shall be lawful for the harbour-master or any other person acting under the orders of the harbour authority of such harbour to cause such ship or cargo to be removed, at the expense of the owner thereof, to such place as may be in conformity with the said bye-law, and all expenses incurred in such removal may be recovered in the same manner in which penalties are by this Act made recoverable.

Notice by owner or master of ship carrying petroleum.

5. The owner or master of every ship carrying a cargo any part of which consists of petroleum to which this Act applies, on entering any harbour within the United Kingdom, shall give notice of the nature of such cargo to the harbour authority having jurisdiction over such harbour.

If such notice is not given the owner and master of such ship shall each incur a penalty not exceeding the sum of five hundred pounds, unless it is shown to the satisfaction of the court before which the case is tried that neither the owner nor the master knew the nature of the goods to which the proceedings relate, nor could with reasonable diligence have obtained such knowledge.

(*a*) See definition of "harbour authority," section 2, *supra*.
(*b*) As to penalties, see section 15.

Section 6.

Label on vessels containing petroleum.

6. Where any petroleum to which this Act applies—

(*a.*) Is kept at any place except during the seven days next after it has been imported ; or,

(*b.*) Is sent or conveyed by land or water between any two places in the United Kingdom ; or,

(*c.*) Is sold or exposed for sale ;

the vessel containing such petroleum shall have attached thereto a label in conspicuous characters, stating the description of the petroleum, with the addition of the words "highly inflammable," and with the addition.

(*a.*) In the case of a vessel kept, of the name and address of the consignee or owner :

(*b.*) In the case of a vessel sent or conveyed, of the name and address of the sender :

(*c.*) In the case of a vessel sold or exposed for sale, of the name and address of the vendor.

All petroleum to which this Act applies which is kept, sent, conveyed, sold, or exposed for sale, in contravention of this section shall, together with the vessel containing the same, be forfeited, and in addition thereto the person keeping, sending, selling, or exposing for sale the same shall for each offence be liable to a penalty not exceeding five pounds.

Regulations as to storage of petroleum.

7. Save as hereinafter mentioned, after the passing of this Act petroleum to which this Act applies (*c*) shall not be kept, except in pursuance of a license (*d*) given by such local authority (*e*) as is in this Act mentioned.

All petroleum kept in contravention of this section shall, together with the vessel containing the same, be forfeited, and in addition thereto the occupier of the place in which such petroleum is so kept shall be liable to a penalty not exceeding twenty pounds a day for each day during which such petroleum is so kept (*f*).

This section shall not apply to any petroleum kept either for private use or for sale, provided the following conditions are complied with :

(1.) That it is kept in a separate glass, earthenware, or metal vessels, each of which contains not more than a pint, and is securely stopped :

(2.) That the aggregate amount kept, supposing the whole contents of the vessels to be in bulk, does not exceed three gallons.

(*c*) See definition of petroleum and application of Act, section 3, *supra*, and section 11 as to testing petroleum and dynamite in schedule one.

(*d*) The mode of granting licenses is provided for by section 9.

(*e*) See section 8 for definition of "local authority."

(*f*) See as to search warrant for petroleum, section 13. As to summary proceedings for the recovery of penalties, constitution of court of summary jurisdiction, &c., see section 15. See as to sufficiency of test of petroleum under section 6 of the repealed Act, the Petroleum Act, 1868 ; *Beck* v. *Stringer*, L. R. 6 Q. B. 497. Under section 4 of the same Act it was decided, that all petroleum proper, whether giving off any inflammable vapour under 100 degrees or not, was within the Act, and that, therefore, the keeping of any such petroleum otherwise than for private use within 50 yards of a dwelling or storehouse without a license, was prohibited by section 4 ; *Jones* v. *Cook*, L. R. 6 Q. B. 505.

Section 8.

Definition of local authority.

8. The following bodies shall respectively be the local authority to grant licenses under this Act in the districts hereinafter mentioned; (that is to say,)

(1.) In the city of London, except as hereafter in this section mentioned, the court of the lord mayor and aldermen of the said city:

(2.) In the metropolis (that is, in places for the time being within the jurisdiction of the metropolitan board of works under the Metropolis Management Act, 1855), except the city of London, and except as hereafter in this section mentioned, the metropolitan board of works:

(3.) In any borough in England or Ireland, except as hereafter in this section mentioned, the mayor, aldermen, and burgesses acting by the council:

(4.) In any place in England or Ireland, except as hereafter in this section mentioned, within the jurisdiction of any trustees or improvement commissioners appointed under the provisions of any local or general Act of parliament, and not being a borough or comprising any part of a borough, the trustees or commissioners:

(5.) In any place in England (except as hereafter in this section mentioned) within the jurisdiction of a local board constituted under the Local Government Act, 1858, and not being any of the districts before mentioned or comprising any part of any such district, the local board:

(6.) In any borough in Scotland, except as hereafter in this section mentioned, the town council:

(7.) In any place in Scotland, except as hereafter in this section mentioned, within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any general or local Act, and not being a borough or comprising any part of a borough, the police commissioners or trustees:

(8.) In any harbour within the jurisdiction of a harbour authority, whether situate or not within the jurisdiction of any local authority before in this section mentioned, the harbour authority, to the exclusion of any other local authority:

(9.) In any place in which there is no local authority as before in this section defined, in England or Ireland, the justices in petty sessions assembled, and in Scotland any two or more justices of the peace for the county sitting as judges in the justice of peace court.

Mode of granting licenses.

9. Licenses in pursuance of this Act shall be valid if signed by two or more of the persons constituting the local authority, or executed in any other way in which other licenses, if any, granted by such authority are executed. Licenses may be granted for a limited time and may be subject to renewal or not in such manner as the local authority think necessary.

There may be annexed to any such license such conditions as to the mode of storage, the nature and situation of the premises in which, and the nature of the goods with which petroleum to which this Act applies is to be stored, the facilities for the testing of such petroleum from time to time, the mode of carrying such petroleum within the district of the licensing authority, and generally as to the safe keeping of such petroleum as may seem expedient to the local authority.

Section 9.

Any licensee violating any of the conditions of his license shall be deemed to be an unlicensed person. There may be charged in respect of each license granted in pursuance of this Act such sum, not exceeding five shillings, as the local authority may think fit to charge.

In case of refusal of license the applicant may memorialize secretary of state or lord lieutenant.

10. If on any application for a license under this Act the local authority refuse the license, or grant the same only on conditions with which the applicant is dissatisfied, the local authority shall, if required by the applicant, deliver to him in writing under the hand or hands of one or more of the persons constituting the local authority, a certificate of the grounds on which they refused the license or annexed conditions to the grant thereof.

The applicant within ten days from the time of the delivery of the certificate may transmit the same to a secretary of state if the application is for a license in England or Scotland, and to the lord lieutenant if the application is for a license in Ireland, together with a memorial, praying that notwithstanding such refusal the license may be granted, or that the conditions may not be imposed, or may be altered or modified in such manner and to such extent as may be set forth in such memorial.

It shall be lawful for the secretary of state, or the lord lieutenant, if he think fit, on consideration of such memorial and certificate, and, if he think it necessary or desirable, after due inquiry and a report by such person as he may appoint for that purpose, to grant the license prayed for, either absolutely or with such conditions as he thinks fit, or to alter or modify the conditions imposed by the local authority ; and the license so granted, or altered and modified, as the case may be, when certified under the hand of a secretary of state, or the lord lieutenant, shall be to all intents as valid as if granted by the local authority.

Testing of petroleum by officer of local authority.

11. Any officer authorized by the local authority may purchase any petroleum from any dealer in it, or may, on producing a copy of his appointment, purporting to be certified by the clerk or some member of the local authority, or producing some other sufficient authority, require the dealer to show him every or any place, and all or any of the vessels in which any petroleum in his possession is kept, and to give him samples of such petroleum on payment of the value of such samples.

When the officer has by either of the means aforesaid taken samples of petroleum, he may declare in writing to the dealer that he is about to test the same, or cause the same to be tested, in manner set forth in schedule one to this Act, and it shall be lawful for him to test the same or cause the same to be tested, at any convenient place at such reasonable time as he may appoint, and the dealer or any person appointed by him may be present at the testing, and if it appear to the officer or other person so testing that the petroleum from which such samples have been taken is petroleum to which this Act applies, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings that may be taken against a dealer in petroleum in pursuance of this Act ; but it shall be lawful for a dealer proceeded against to give evidence in proof that such certificate is incorrect, and thereupon the court before which any such proceedings may be taken may, if such court think fit, appoint some person skilled in testing petroleum to examine the samples to which such certificate relates, and to declare whether such certificate is correct or incorrect.

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Any expenses incurred in testing any petroleum of such dealer in pursuance of this section shall, if such dealer be convicted of keeping, sending, conveying, selling, or exposing for sale, petroleum in contravention of this Act, be deemed to be a portion of the costs of the proceedings against him, and shall be paid by him accordingly. In any other event such expenses shall be paid by the local authority out of any funds for the time being in their hands, and in case the local authority are the justices, out of the county rate.

Penalty for refusing information and obstructing officer.

12. Any dealer who refuses to show to any officer authorized by the local authority every or any place or all or any of the vessels in which petroleum in his possession is kept, or to give him such assistance as he may require for examining the same, or to give to such officer samples of such petroleum on payment of the value of such samples, or who wilfully obstructs the local authority, or any officer of the local authority, in the execution of this Act, shall incur a penalty not exceeding twenty pounds.

Search for petroleum. See 23 & 24 Vict. c. 139, s. 25.

13. Where any court of summary jurisdiction is satisfied by information on oath that there is reasonable ground to believe that any petroleum to which this Act applies is being kept, sent, conveyed, or exposed for sale within the jurisdiction of such court in contravention of this Act, at any place, whether a building or not, or in any ship or vehicle, such court shall grant a warrant by virtue whereof it shall be lawful for any person named in such warrant to enter the place, ship, or vehicle named in such warrant, and every part thereof, and examine the same and search for petroleum therein, and take samples of any petroleum found therein, and if any petroleum to which this Act applies be found therein, which is kept, sent, conveyed, or exposed for sale, in contravention of this Act, to seize and remove such petroleum, and the vessel containing the same, and to detain such petroleum and vessel until some court of summary jurisdiction has determined whether the same are or not forfeited, the proceedings for which forfeiture shall be commenced forthwith after the seizure.

Any person seizing any petroleum to which this Act applies in pursuance of this section shall not be liable to any suit for detaining the same, or for any loss or damage incurred in respect of such petroleum, otherwise than by any wilful act or neglect while the same is so detained.

If any petroleum to which this Act applies is seized in pursuance of this section in any ship or vehicle, the person seizing the same may use for the purposes of the removal thereof, during twenty-four hours after the seizure, the said ship or vehicle, with the tackle, beasts, and accoutrements belonging thereto, and if he do so shall pay to the owner thereof a reasonable recompense for the use thereof, and the amount of such recompense shall, in case of dispute, be settled by the court of summary jurisdiction before whom proceedings for the forfeiture are taken, and may be recovered in like manner as penalties under this Act may be recovered.

Any person who, by himself or by any one in his employ or acting by his direction or with his consent, refuses or fails to admit into any place occupied by or under the control of such person, any person demanding to enter in pursuance of this section, or in any way obstructs or prevents any person in or from making any such search, examination, or seizure, or taking any such samples as authorized by this section, shall be liable to pay a penalty not exceeding twenty

pounds, and to forfeit all petroleum to which this Act applies which is found in his possession or under his control. Section 13.

Application of Act to other substances.

14. Her Majesty may from time to time make, revoke, and vary orders in council directing this Act or any part thereof to apply to any substance, and this Act, or the part thereof specified in the order shall, during the continuance of the order, apply to such substance, and shall be construed and have effect as if throughout it such substance had been included in the definition of petroleum to which this Act applies, subject to the following qualifications.

(1.) The quantity of any substance to which this Act is directed by order in council to apply, which may be kept without a license, shall be such quantity only as is specified in that behalf in such order, or if no such quantity is specified no quantity may be kept without a license.

(2.) The label on the vessel containing such substance shall be such as may be specified in that behalf in the order.

Summary proceedings for offences, penalties, &c.

15. In England and Ireland all offences and penalties under this Act, and all moneys and costs directed by this Act to be recovered as penalties, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Acts.

In Scotland all offences and penalties under this Act, and all money and expenses by this Act directed to be recovered as penalties, shall, save as hereinafter provided, be prosecuted and recovered at the instance of the procurator fiscal or of any officer authorized in that behalf by the harbour authority or local authority under the provisions of the Summary Jurisdiction Acts before a court of summary jurisdiction, and all necessary powers and jurisdictions are hereby conferred on such court in Scotland.

Provided as follows :

1. A court of summary jurisdiction shall not impose a penalty exceeding fifty pounds, but any such court may impose that or any less penalty for any one offence, notwithstanding the offence involves a penalty of higher amount.

2. In Scotland any penalty exceeding fifty pounds shall be recovered and enforced in the same manner in which any penalty due to Her Majesty under any Act of parliament may be recovered and enforced.

3. The court of summary jurisdiction, when hearing and determining an information or complaint, shall be constituted in some one of the following manners ; (that is to say,)

(*a.*) In England, either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of one of the magistrates hereinafter mentioned, sitting alone or with others at some court or other place appointed for the administration of justice ; that is to say, the lord mayor, or an alderman of the city of London, a metropolitan police magistrate, a stipendiary magistrate, or some other officer or officers for the time being empowered by law to do alone or with others any act authorized to be done by more than one justice of the peace :

(*b.*) In Scotland, of two or more justices of the peace sitting as judges in a justice of the peace court, or of one of the magistrates hereinafter mentioned sitting alone or with others at some court or other place appointed for the

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administration of justice ; that is to say, the sheriff of the county or his substitute, or the provost or other magistrate of a royal burgh, or some other officer or officers for the time being empowered by law to do alone or with others any act authorized to be done by more than one justice of the peace :

(*c.*) In Ireland, within the police district of Dublin metropolis, of one of the divisional justices of the police district of Dublin metropolis, sitting at a police court within the said district ; and elsewhere, of a stipendiary magistrate, sitting alone or with others, or of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions.

4. The description of any offence under this Act in the words of such Act shall be sufficient in law.

5. Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant or prosecutor.

6. No conviction or order made in pursuance of this Act shall be quashed for want of form or be removed by *certiorari* or otherwise, either at the instance of the crown or of any private party, into any superior court. Moreover, no warrant of commitment shall be held void by reason of any defect therein, provided that there is a valid conviction to maintain such warrant, and it is alleged in the warrant that the party has been convicted.

7. All forfeitures may be sold or otherwise disposed of in such manner as the court may direct.

8. In Scotland all penalties imposed under the provisions of this Act by a court of summary jurisdiction may be enforced in default of payment by imprisonment for a term not exceeding three calendar months ; and all such penalties recovered and the proceeds of all forfeitures sold under this Act shall be paid to the clerk of the court of summary jurisdiction, and by him accounted for and paid to the persons and for the purposes under stated ; (that is to say,)

(*a.*) To the Queen's and lord treasurer's remembrancer, on behalf of Her Majesty, when the court is the sheriff's court :

(*b.*) To the collector of county rates in aid of the general county assessment when the court is the justice of the peace court :

(*c.*) To the treasurer of the burgh in aid of the funds of the burgh when the court is a burgh court.

9. In Ireland all penalties recovered under the provisions of this Act shall be applied according to the fines, Ireland, Act, 1851, or any Act amending the same.

Reservation of previous powers with respect to inflammable substances.

16. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any local or harbour authority by Act of parliament, law, or custom, and every local authority and harbour authority may exercise such other powers in the same manner as if this Act had not passed ; and nothing in this Act contained shall be deemed to exempt any person from any penalty to which he would otherwise be subject in respect of a nuisance.

Section 17.

Repeal of Acts.

17. The Acts mentioned in schedule two to this Act are hereby repealed to the extent in that schedule mentioned.

Provided that such appeal shall not affect any order in council made, or any license granted, under any Act hereby repealed or any liability or penalty incurred in respect of any offence committed before the passing of this Act, or any remedy or proceeding for enforcing such liability or penalty, and every such order, so far as relates to the matters provided for by this Act, and every such license, shall have effect as if it had been made or granted under this Act.

Duration of Act (*a*).

18. This Act shall continue in force until the first day of October one thousand eight hundred and seventy-two, and no longer.

SCHEDULES.

SCHEDULE ONE.

Directions for testing petroleum to ascertain the temperature at which it gives off inflammable vapour.

The vessel which is to hold the oil shall be of thin sheet iron ; it shall be two inches deep and two inches wide at the opening, tapering slightly towards the bottom ; it shall have a flat rim, with a raised edge one quarter of an inch high round the top ; it shall be supported by this rim in a tin vessel four inches and a half deep and four and a half inches in diameter ; it shall also have a thin wire stretched across the opening, which wire shall be so fixed to the edge of the vessel that it shall be a quarter of an inch above the surface of the flat rim. The thermometer to be used shall have a round bulb about half an inch in diameter, and is to be graduated upon the scale of Fahrenheit, every ten degrees occupying not less than half an inch upon the scale.

The inner vessel shall be filled with the petroleum to be tested, but care must be taken that the liquid does not cover the flat rim. The outer vessel shall be filled with cold, or nearly cold, water ; a small flame shall be applied to the bottom of the outer vessel, and the thermometer shall be inserted into the oil so that the bulb shall be immersed about one and a half inches beneath the surface. A screen of pasteboard or wood shall be placed round the apparatus, and shall be of such dimensions as to surround it about two-thirds, and to reach several inches above the level of the vessels.

When heat has been applied to the water until the thermometer has risen to about ninety degrees Fahrenheit, a very small flame shall be quickly passed across the surface of the oil on a level with the wire. If no pale blue flicker or flash is produced, the application of the flame is to be repeated for every rise of two or three degrees in the thermometer. When the flashing point has been noted, the test shall be repeated with a fresh sample of the oil, using cold, or nearly cold, water as before, withdrawing the source of heat from the outer

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(*a*) This Act has been continued by annual statutes, the last of which was the 41 & 42 Vict. c. 70, Sched. I., extending the duration of the Act until the 31st December, 1879.

Sched. I.

vessel when the temperature approaches that noted in the first experiment, and applying the flame test at every rise of two degrees in the thermometer.

SCHEDULE TWO.

Year and Chapter.	Title.	Extent of Repeal.
25 & 26 Vict. c. 66.	An Act for the safe keeping of Petroleum.	The whole Act.
29 & 30 Vict. c. 69.	The Carriage and Deposit of Dangerous Goods Act, 1866.	Sections eight and nine.
31 & 32 Vict. c. 56.	The Petroleum Act, 1868.	The whole Act.

AN ACT

TO AMEND THE LAW WITH RESPECT TO MANUFACTURING, KEEPING, SELLING, CARRYING, AND IMPORTING GUNPOWDER, NITRO-GLYCERINE, AND OTHER EXPLOSIVE SUBSTANCES.

38 VICT. CHAP. 17.

14TH JUNE, 1875.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited as the Explosives Act, 1875 (*a*). Short title.

(*a*) This Act which amends the law respecting the manufacture, keeping, selling, conveying and importing gunpowder and other explosive substances, by section 122 repeals the Acts mentioned in Schedule 4, namely, 23 & 24 Vict. c. 139, 24 & 25 Vict. c. 130, 25 & 26 Vict. c. 98, 29 & 30 Vict. c. 69, 32 & 33 Vict. c. 113, and a portion of section 26 of the Volunteer Act, 1863, 26 & 27 Vict. c. 65. The first part of this Act embodies the law relating to the manufacture and keeping of gunpowder, the licensing and regulation of factories and magazines, the licensing and regulation of consumers' stores for gunpowder, the registration and regulation of premises for retail dealing, with certain subsidiary provisions, and the sale and conveyance of gunpowder. The 2nd part contains the law applicable to explosives other than gunpowder, and specially dangerous explosives, with provisions in favour of certain specified manufacturers and dealers. The 3rd part provides for the appointment of government inspectors and their powers and duties, and the powers and duties of local authorities, with a power of search by specified officers and proceedings thereon. The 4th part contains supplementary provisions with respect to legal proceedings, the power of arrest, &c., and as to exemptions and savings from the operation of the Act and other matters. The 54th section of the former Metropolitan Building Act, 7 & 8 Vict. c. 84, which is excepted from the provisions repealed by the present Building Act, 18 & 19 Vict. c. 122, prohibits the erection, &c., of buildings within a certain distance of buildings used for dangerous businesses, such as the manufacture of gunpowder and other substances liable

Section 2.

Commencement of Act (*a*).

2. This Act shall come into operation on the first day of January, one thousand eight hundred and seventy-six, in this Act referred to as the commencement of this Act; but any order in council, order, general rules, and bye-laws, and any appointment to an office, may be made under this Act at any time after the passing thereof, but shall not take effect until the commencement of this Act.

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to sudden explosion, and imposes penalties for any breach of its provisions. It is a nuisance at common law to erect gunpowder mills or keep gunpowder in a dangerous situation; 2 Str. 1167; Holt's Ca. 499. And this Act by section 102, provides that the Act shall not, except as expressly provided, exempt any person from actions or suits for nuisances, tort, or otherwise, or from indictment or other proceedings for a nuisance, &c., so that no person be punished twice for the same offence. See 2 & 3 Vict. c. 47, empowering superintendents or inspectors belonging to the metropolitan police force to enter ships in the Thames to search for unlawful quantities of gunpowder; and section 37 of same Act, imposing penalties for heating or melting combustible matters on board any ship, &c., on the river Thames, between Westminster Bridge and Blackwall.

The following orders in council and orders of the secretary of state made under this Act will be found in the appendix to the Guide Book to the Explosives Act, 1875, by Major Majendie, R.A., Her Majesty's Inspector of Explosives.

Orders in Council.

Order in Council No. 1, classifying explosives.
" " No. 2, making general rules for factories for explosives other than gunpowder.
" " No. 3, relating to magazines for explosives other than gunpowder, whether with or without gunpowder.
" " No. 4, relating to small firework factories.
" " No. 5, relating to stores for gunpowder exclusively.
" " No. 6, relating to stores licensed for mixed explosives.
" " No. 7, relating to premises registered for the keeping of mixed explosives.
" " No. 8, relating to the keeping of explosive for private use and not for sale.
" " No. 9, relating to the sale of explosive.
" " No. 10, relating to importation of explosive.
" " No. 11, respecting notice to be given of accidents connected with the conveyance of explosives other than gunpowder.

Orders of Secretary of State.

Order of Secretary of State No. 1, applying general rules to floating magazines for gunpowder.
" " " No. 2, applying general rules to floating magazines for explosives other than gunpowder, whether with or without gunpowder.
" " " No. 3, adapting general rules to the packing for conveyance of explosives other than gunpowder.
" " " No. 4, making bye-laws as to the conveyance of explosives upon roads and in certain special cases.

(*a*) See definition of expression "this Act," section 108.

Section 3.

3. This Act shall apply to gunpowder and other explosives as defined by this section (*c*).

Substances to which this Act applies (*b*).

The term "explosive" in this Act—

(1.) Means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires, and every other substance, whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect; and

(2.) Includes fog signals (*d*), fireworks, fuzes, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined.

PART I.

Law relating to Gunpowder (*e*).

General Law as to Manufacture and Keeping of Gunpowder.

Gunpowder to be manufactured only at factory lawfully existing or licensed under this Act (*f*).

4. The manufacture of gunpowder shall not, nor shall any process of such manufacture, be carried on except at a factory for gunpowder either lawfully existing (*g*) or licensed (*h*) for the same under this Act.

Provided that nothing in this section shall apply to the making of a small quantity of gunpowder for the purpose of chemical experiment and not for practical use or for sale.

(*b*) See note to section 106, *infra*, as to order of council made under that section defining the composition, quality, and character of explosives, and classifying explosives, and section 104 providing that any substance declared by order in council to be specially dangerous to life or property as liable to explosion, shall be deemed to be an explosive within the meaning of this Act. See special definitions in section 107, and general definitions in section 108 of the Act.

(*c*) See exceptions from the Act and savings, section 97, *et seq.*

(*d*) Fog signals were held to be fireworks under the 23 & 24 Vict. c. 139, s. 6, and a person who manufactured and kept them upon premises within the specified distance without a license incurred a penalty; *Bliss* v. *Lilley*, 32 L. J. M. C. 3.

(*e*) See section 39 as to the application of this part of the Act to other explosives, subject to the modifications and additions in section 40.

(*f*) By section 105, *infra*, persons carrying on the processes as therein described, shall be subject to the provisions of the Act, as if they manufactured an explosive, and the expression "manufacture" shall be construed accordingly.

(*g*) "Existing" means at the passing of the Act, section 108. See provisions in section 14 with reference to existing factories and magazines for gunpowder, and section 20 as to continuing certificates from local authority, and see application of Part I. of the Act to existing factories and magazines.

(*h*) See section 8 as to grant and confirmation of license, and section 15, *et seq*, as to licenses for gunpowder stores, and section 49 as to licensing small firework factories.

Section 4.

If any person manufactures gunpowder or carries on any process of such manufacture at any place at which he is not allowed by this section so to do, he shall be deemed to manufacture gunpowder at an unauthorized place.

Where gunpowder is manufactured at an unauthorized place—

1. All or any part of the gunpowder or the ingredients of gunpowder which may be found either in or about such place or in the possession or under the control of any person convicted under this section, may be forfeited; and
2. The person so manufacturing shall be liable to a penalty (*a*) not exceeding one hundred pounds a day for every day during which he so manufactures.

Gunpowder (except for private use) to be kept only in existing or new magazine or store, or in registered premises.

5. Gunpowder shall not be kept at any place except as follows; that is to say,

(1.) Except in the factory (either lawfully existing or licensed for the same under this Act) in which it is manufactured; or

(2.) Except in a magazine or store for gunpowder either lawfully existing or licensed under this Act for keeping gunpowder; or

(3.) Except in premises registered under this Act for keeping gunpowder.

Provided that this section shall not apply—

(1.) To a person keeping for his private use and not for sale gunpowder to an amount not exceeding on the same premises thirty pounds; or

(2.) To the keeping of any gunpowder by a carrier or other person for the purpose of conveyance, when the same is being conveyed or kept in accordance with the provisions of this Act with respect to the conveyance of gunpowder.

Any gunpowder kept in any place other than as above in this section mentioned shall be deemed to be kept in an unauthorized place.

Where any gunpowder is kept in an unauthorized place—

(1.) All or any part of the gunpowder found in such place may be forfeited; and

(2.) The occupier of such place, and also the owner of, or other person guilty of keeping the gunpowder, shall each be liable to a penalty not exceeding two shillings for every pound of gunpowder so kept.

Licensing of Factories and Magazines for Gunpowder.

Application for license for new

6. A new factory or magazine for gunpowder shall not be established except on the site and in the manner specified in a license for the same granted under this Act.

(*a*) By section 91 every offence under this Act may be prosecuted, and every penalty may be recovered, and all explosives, &c., liable to be forfeited, either on indictment or before a court of summary jurisdiction, subject to the conditions expressed in that and the following section. Section 79 empowers the court to award absolute imprisonment in certain cases; see section 93 as to appeal, and section 94 as to constitution of court of summary jurisdiction. See provisions in favour of certain manufacturers and dealers in sections 44, 45, 46, 47, 48, and 50, and savings in sections 98, 99, 100, and 101.

Section 6.

factory or magazine.

An applicant for such a license shall submit to the secretary of state the draft of a license accompanied by a plan (drawn to scale) of the proposed factory or magazine, and the site thereof (which plan shall be deemed to form part of and to be in this Act included in the expression "the license").

The draft license shall contain the terms which the applicant proposes to have inserted in the license, and shall specify such of the following matters as are applicable; namely,

(*a.*) The boundaries of the land forming the site of the factory or magazine and either any belt of land surrounding the site which is to be kept clear, and the buildings and works from which it is to be kept clear, or the distances to be maintained between the factory or magazine, or any part thereof, and other buildings and works; and

(*b.*) The situation, character, and construction of all the mounds, buildings, and works on or connected with the factory or magazine, and the distances thereof from each other; and

(*c.*) The nature of the processes to be carried on in the factory and in each part thereof, and the place at which each process of the manufacture, and each description of work connected with the factory or magazine, is to be carried on, and the places in the factory or magazine at which gunpowder and any ingredients of gunpowder, and any articles liable to spontaneous ignition, or inflammable or otherwise dangerous are to be kept; and

(*d.*) The amount of gunpowder and of ingredients thereof wholly or partly mixed to be allowed at the same time in any building or machine or any process of the manufacture or within a limited distance from such building or machine, having regard to the situation or construction of such building, and to the distance thereof from any other building or any works; and

(*e.*) The situation, in the case of a factory, of each factory magazine, and in the case of another magazine, of each building forming part of such magazine in which gunpowder is to be kept, and the maximum amount of gunpowder to be kept in each factory magazine, and in each such building as aforesaid; and

(*f.*) The maximum number of persons to be employed in each building in the factory; and

(*g.*) Any special terms which the applicant may propose by reason of any special circumstances arising from the locality, the situation or construction of any buildings or works, or the nature of any process, or otherwise.

The secretary of state, after examination of the proposal, may reject the application altogether or may approve of the draft license, with or without modification or addition, and grant to the applicant permission to apply to the local authority (*b*) for their assent to the establishment of the factory or magazine on the proposed site.

Application for assent of

7. The local authority, upon application being made for their assent to the establishment of a new factory or magazine on the proposed

(*b*) For definition and powers of "local authority" for the purposes of the Act, see sections 67, 68, and 69, and section 70 as to their expenses.

Section 7.

local authority to site of new factory or magazine.

site, shall cause notice to be published by the applicant in manner directed by this Act of the application and of the time and place at which they will be prepared to hear the applicant, and any persons objecting to such establishment who have not less than seven clear days before the day of hearing sent to the clerk of the local authority and to the applicant notice of their intention to appear and object, with their name, address, and calling, and a short statement of the grounds of their objection.

Upon the hearing of the application, or any adjournment thereof, the local authority may dissent altogether from the establishment of such new factory or magazine on the proposed site, or assent thereto, either absolutely or on any conditions requiring additional restrictions or precautions.

Where the site of the proposed factory or magazine is situate within or within one mile of the limits of the jurisdiction of any urban sanitary authority, or of any harbour authority, the applicant shall serve on such authority, if they are not the local authority, notice of the application and of the time and place of hearing fixed by the local authority.

The said notices shall be published and served by the applicant not less than one month before the hearing.

The local authority shall fix the time and place of hearing as soon as practicable after application made to them, and the time so fixed shall be as soon as practicable after the expiration of the said month from the publication and service of the notices by the applicant, and their final decision shall be given as soon as practicable after the expiration of the said month.

The place so fixed shall be situate within the jurisdiction of the local authority, or within a convenient distance of the limits of that jurisdiction.

The costs of any objections which the local authority may deem to be frivolous shall be ascertained by an order made by the local authority, and shall be a debt due from the objector to the applicant, of which such order shall be conclusive evidence.

Where the site of the proposed factory or magazine is situate partly within the jurisdiction of one local authority and partly within the jurisdiction of another, the assent of both local authorities shall be applied for in manner provided by this Act.

Grant and confirmation of license.

8. If on the hearing of the application for the establishment of a factory or magazine the local authority assent thereto either absolutely or on conditions submitted to by the applicant, the applicant shall be entitled to the license applied for in accordance with the draft approved by the secretary of state, with the addition (if the assent was on conditions) of the additional restrictions and precautions required by those conditions.

If the local authority assent on any conditions not submitted to by the applicant, or dissent, the applicant may appeal to the secretary of state, giving notice of such appeal to the local authority, and requiring them to state in writing their reasons for such conditions or dissent; and the secretary of state, after considering the reasons (if any) so stated, and after such inquiry, local or other, as he may think necessary, may if the local authority dissented, refuse the license, or may in either case grant the license applied for in accordance with the draft license either as previously approved by him, or with such modifications and additions as he may consider required to meet the reasons (if any) so stated by the local authority.

The secretary of state, when satisfied that the factory or magazine

is sufficiently completed according to the license to justify the use thereof, shall confirm the license, but until so confirmed the license shall not come into force. Section 8.

The land forming the site bounded as described in the license shall, with every mound, building, and work thereon for whatever purpose, be deemed, for the purposes of this Act, to be the factory or magazine referred to in the license.

Regulation of Factories and Magazines for Gunpowder.

9. In every gunpowder factory and magazine— Regulation of factories and magazines for gunpowder.

(1.) The factory or magazine, or any part thereof, shall not be used for any purpose not in accordance with the license; and

(2.) The terms of the license shall be duly observed, and the manufacture or keeping of any process in or work connected with the manufacture or keeping of gunpowder shall not be carried on except in accordance with those terms; and

(3.) The factory or magazine and every part thereof shall be maintained in accordance with the license; and any material alteration in the factory or magazine by enlarging or adding to the site, or by externally enlarging or adding to any building, or by altering any mound otherwise than by enlargements or by making any new work, shall not be made except in pursuance of an amending license granted under this Act.

In the event of any breach (by any act or default) of this section in any factory or magazine,

(*a.*) All or any part of the gunpowder or ingredients thereof in respect to which, or being in any building or machine in respect to which, the offence was committed, may be forfeited; and

(*b.*) The occupier (*a*) shall be liable to a penalty (*b*) not exceeding in the case of the first offence fifty pounds, and in the case of a second or any subsequent offence one hundred pounds, and in addition fifty pounds for every day during which such breach continues.

The occupier of a factory shall not be deemed guilty of a breach of this section for using in a case of emergency, or temporarily, one building or part of a building in which any process of the manufacture is, under the terms of the license, carried on, for another process of the manufacture, if he do not carry on in such building or part more than one process at the same time, and if the quantity of gunpowder or ingredients thereof in such building or part do not exceed the quantity allowed to be therein, or any less quantity allowed to be in the building or part of a building in which such other process is usually carried on; and if upon such use being continued after the lapse of twenty-eight days from the first beginning of such use he send notice of such use to a government inspector, and the government inspector do not require the discontinuance of such use.

(*a*) See definition of "occupier," section 108.

(*b*) See section 91, as to prosecution of offences and recovery of penalties under the Act.

Section 10.

General rules for factories and magazines.

10. In every gunpowder factory and magazine the following general rules shall be observed :

(1.) In a factory every factory magazine, and in any other magazine every building in which gunpowder is kept, shall be used only for the keeping of gunpowder, and receptacles for or tools or implements for work connected with the keeping of such gunpowder ; and

(2.) The interior of every building in which any process of the manufacture is carried on or in which gunpowder or any ingredients thereof, either mixed or partially mixed, are kept, or in the course of manufacture are liable to be (in this Act referred to as a danger building), and the benches, shelves, and fittings in such building (other than machinery), shall be so constructed or so lined or covered as to prevent the exposure of any iron or steel in such manner, and the detaching of any grit, iron, steel, or similar substance in such manner, as to come into contact with the gunpowder or ingredients thereof in such building, and such interior, benches, shelves, and fittings shall, so far as reasonably practicable, be kept free from grit and otherwise clean ; and

(3.) Every factory magazine and expense magazine in a factory, and every danger building in a magazine, shall have attached thereto a sufficient lightning conductor, unless, by reason of the construction by excavation or the position of such magazine or building, or otherwise, the secretary of state considers a conductor unnecessary, and every danger building in a factory shall, if so required by the secretary of state, have attached thereto a sufficient lightning conductor ; and

(4.) Charcoal, whether ground or otherwise, and oiled cotton, oiled rags, and oiled waste, and any articles whatever liable to spontaneous ignition, shall not be taken into any danger building, except for the purpose of immediate supply and work or immediate use in such building, and upon the cessation of such work or use shall be forthwith removed ; and

(5.) Before repairs are done to or in any room in or other part of a danger building, that room or part shall, so far as practicable, be cleaned by the removal of all gunpowder, and wholly or partly mixed ingredients thereof, and the thorough washout of such room or part ; and such room or part of the building after being so cleaned shall not be deemed to be a danger building within the meaning of these rules until gunpowder or the wholly or partly mixed ingredients thereof are again taken into it ; and

(6.) There shall be constantly kept affixed in every danger building, either outside or inside, in such manner as to be easily read, a statement of the quantities of gunpowder or ingredients allowed to be in the building, and a copy of these rules, and of any other part of this Act required by the secretary of state to be affixed, and of such part of the license and special rules made under this Act as apply to the building ; and with the addition in a factory of the name of the building, or words indicating the purpose for which it is used ; and

(7.) All tools and implements used in any repairs to or in a danger building shall be made only of wood or copper or brass or some soft metal or material, or shall be covered with some safe and suitable material ; and

Section 10.

(8.) Due provision shall be made, by the use of suitable working clothes without pockets, suitable shoes, searching and otherwise, or by some of such means, for preventing the introduction into any danger building of fire, lucifer matches, or any substance or article likely to cause explosion or fire, and for preventing the introduction of any iron, steel, or grit into any part of a danger building where it would be likely to come into contact with gunpowder or the wholly or partly mixed ingredients thereof; but this rule shall not prevent the introduction of an artificial light of such construction, position, or character as not to cause any danger of fire or explosion; and

(9.) No person shall smoke in any part of the factory or magazine, except in such part (if any) as may be allowed by the special rules; and

(10.) Any carriage, boat, or other receptacle in which gunpowder, or the wholly or partly mixed ingredients thereof, are conveyed from one building to another in a factory or magazine, or from any such building to any place outside of such factory or magazine, shall be constructed without any exposed iron or steel in the interior thereof, and shall contain only the gunpowder and ingredients, and shall be closed or otherwise properly covered over; and the gunpowder and ingredients shall be so conveyed with all due diligence, and with such precautions and in such manner as will sufficiently guard against any accidental ignition; and

(11.) A person under the age of sixteen years shall not be employed in or enter any danger building, except in the presence and under the supervision of some grown-up person; and

(12.) In a factory the ingredients in course of manufacture into gunpowder shall be removed with all due diligence from each working building so soon as the process connected with those ingredients which is carried on in such building is completed, and all finished gunpowder shall with all due diligence either be removed to a factory magazine, or sent away immediately from the factory, and such ingredients and gunpowder shall be loaded and unloaded with all due diligence; and

(13.) In a factory all ingredients to be made or mixed into gunpowder shall, before being so made or mixed, be carefully sifted, for the purpose of removing therefrom, so far as practicable, all dangerous foreign matter.

The secretary of state may, from time to time, by order, make, and when made rescind and alter, such modifications in the foregoing general rules as may appear to him to be necessary for adapting the same to floating magazines, and such modifications shall have effect as if they were contained in this section.

In the event of any breach (by any act or default) of the general rules in any factory or magazine,—

(*a.*) All or any part of the gunpowder or ingredients thereof in respect to which, or being in any building or machine in respect to which, the offence was committed, may be forfeited; and

(*b.*) The occupier shall be liable to a penalty not exceeding ten pounds, and in addition (in the case of a second offence) ten pounds for every day during which such breach continues.

Section 11.

Special rules for regulation of workmen in factory or magazine.

11. Every occupier of a gunpowder factory or magazine shall, with the sanction of the secretary of state, make special rules for the regulation of the persons managing or employed in or about such factory or magazine, with a view to secure the observance of this Act therein, and the safety and proper discipline of the said persons, and the safety of the public.

There may be annexed to any breach of special rules made in pursuance of this section such penalties, not exceeding forty shillings for each offence, as may be deemed just.

The occupier may, and if required by the secretary of state shall, with the sanction of the secretary of state, repeal, alter, or add to any special rules made in pursuance to this section.

If an occupier is required by the secretary of state to make, repeal, alter, or add to any rules under this section, and fail within three months after such requisition to comply therewith to the satisfaction of the secretary of state, the secretary of state may make, repeal, alter, or add to the special rules, and anything so done by the secretary of state shall have effect as if done by the occupier with the sanction of the secretary of state.

If the occupier feel aggrieved by any such requisition, or by anything so done by the secretary of state, he may, after receiving such requisition or notice of the same being so done, require the matter to be referred to arbitration in manner provided by this Act.

Supplemental as to Factories and Magazines for Gunpowder.

Alteration of terms of license and enlargement of factory or magazine.

12. Where the occupier of any gunpowder factory or magazine desires that any alteration should be made in the terms of his license, or any material alteration made in the factory or magazine by enlarging or adding to the site or by externally enlarging or adding to any building, or by altering any mound otherwise than by enlargement, or by making any new work, he may apply for an amending license.

If he satisfy the secretary of state that the alteration may be properly permitted, having regard to the safety of the persons employed in the factory or magazine, and will not materially either increase the danger to the public from fire or explosion, or diminish the distance of any danger building in the factory or magazine from any building or work outside and in the neighbourhood of the factory or magazine, or increase the amount of gunpowder allowed to be kept in the factory magazine, or in any building in the magazine, the secretary of state may grant the amending license of his own authority, but save as aforesaid, the provisions of this Act with respect to the application for and grant of a new license shall apply to such amending license.

Devolution and determination of license.

13. A gunpowder factory or magazine license shall not be avoided by any change in the occupier of the factory or magazine; but notice of the name, address, and calling of the new occupier shall be sent to the secretary of state within three months after the change, and in default such new occupier shall be liable to a penalty not exceeding twenty shillings for every week during which such default continues.

A factory or magazine license shall be determined by a discontinuance of the business carried on in pursuance of any such license if such discontinuance continues for a period of two years or more, or if the factory or magazine is used for any purpose not authorized b the license.

Provided that if the occupier sends to the secretary of state, and publishes in manner directed by the secretary of state, a notice to the effect that the right to the factory or magazine license is not intended to be surrendered, the license shall not be determined until after the expiration of five years after the first discontinuance of the business, whether the factory or magazine has or has not been used for any purpose not authorized by the license. Section 13.

Application of Act to existing Factories and Magazines for Gunpowder.

Continuing certificate for existing factories and magazines.

14. A factory or magazine for gunpowder used at the time of the passing of this Act shall not be deemed to be a lawfully existing factory or magazine within the meaning of this Act unless the occupier thereof apply for and obtain in manner provided by this Act a certificate (in this Act referred to as a continuing certificate) in respect of such factory or magazine.

The occupier desirous of obtaining such certificate shall, before the expiration of three months after the commencement of this Act, send to the secretary of state an application for such certificate, stating his name, address, and calling, and the situation of his factory or magazine, and accompanied with such particulars respecting the factory or magazine and the site thereof, and the mounds, buildings, and works thereon or connected therewith, and such copies of any plans in the possession of the occupier, as the secretary of state may deem necessary for enabling him to make out the certificate.

The secretary of state upon receiving such application shall grant the continuing certificate for the factory or magazine to which the application relates, and shall insert therein, by reference to a plan (which shall be deemed part of the certificate) or otherwise, such particulars as he may consider sufficient to identify the factory or magazine and indicate the site and all the existing mounds, buildings, and works thereon or connected therewith: the plan so referred to may be either the plan sent by the occupier or such other plan as the secretary of state may cause to be made for the purpose.

The continuing certificate shall specify the maximum amount of gunpowder to be kept if the certificate is for a factory in each factory magazine, or in all the factory magazines of the factory, and if for a magazine in each building in the magazine, or in all the buildings of the magazine, and the amount so specified, where the maximum amount so to be kept is at the passing of this Act limited by any Act or by license or otherwise, shall be that amount, and where there is no such limitation, shall be the maximum amount which the factory magazine, or all the factory magazines of the factory, or the building or all the buildings of the magazine, was or were capable of holding on the first day of January one thousand eight hundred and seventy-five.

The regulations in part one of the first schedule to this Act shall be deemed to form part of the terms of a continuing certificate for a factory.

The land forming the site bounded as described in the certificate shall, with every mound, building, and work thereon, for whatever purpose, be deemed, for the purpose of this Act, to be the factory or magazine referred to in the certificate.

Where a license has been obtained before the twenty-fifth day of

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February one thousand eight hundred and seventy-five, for a factory or magazine for gunpowder, and such factory or magazine has not been completed before the passing of this Act, such factory or magazine shall be deemed to be, for the purposes of this section, a factory or magazine for gunpowder used at the time of the passing of this Act:

Provided that—

(1.) The particulars to be stated in the continuing certificate shall, as regards such mounds, buildings, and works as are not completed at the date of the certificate, relate to the same as designed on the commencement of the construction of the factory or magazine; and

(2.) The maximum amount of gunpowder to be specified in the continuing certificate as being allowed to be kept in any building shall, subject to the provisions of any Act or license, be the maximum amount which such building was designed on the commencement of the building thereof to hold, or such less amount as it is completed for holding at the time of the passing of this Act.

For the purposes of this Act, a continuing certificate shall (save as otherwise expressly provided) be deemed to be a license, and the factory or magazine, as the case may be, mentioned therein to be a factory or magazine licensed under this Act, and the provisions of this Act shall be construed accordingly.

Provided that—

(1.) It shall not be necessary in any case to apply for the assent of the local authority to an amending license for an alteration in the terms of such certificate, or for an alteration in the factory or magazine; and

(2.) Such factory or magazine, if the certificate is determined by the discontinuance of the business carried on therein, shall cease to be deemed an existing factory or magazine.

The occupier of any lawfully existing factory or magazine may, until the expiration of the time within which he is required by this section to send to the secretary of state an application for a continuing certificate, and if he has sent such an application as is required by this section may, until he obtains such certificate, carry on his business in such factory or magazine in like manner as if this Act had not passed.

CONSUMERS' STORES FOR GUNPOWDER.

Licensing and Regulation of Stores.

Store license to be obtained from local authority (*a*).

15. Any person may apply for a license for a gunpowder store to the local authority at the time and place appointed by such authority, stating his name, address, and calling, the proposed site and construction of the store and the amount of gunpowder he proposes to store therein; and the local authority shall, as soon as practicable, if the proposed site, construction of the store, and amount of gunpowder are in accordance with the order in council hereinafter mentioned, grant to the applicant, on payment of such fee, not ex-

(*a*) See section 28 as to registers of store licenses and premises registered.

ceeding five shillings, as may be fixed by that authority, the license applied for. Section 15.

Order in council prescribing situation and construction of stores.

16. Her Majesty may from time to time, by order in council made on the recommendation of the secretary of state—

(1.) Regulate the construction and materials and fittings of gunpowder stores; and

(2.) Prescribe the buildings and works from which gunpowder stores are to be separated, and the distances by which they are to be separated; and

(3.) Prescribe the maximum amount of gunpowder, not exceeding two tons, to be kept in stores, graduated according to their construction and situation and their distance from the said buildings and works.

Provided that an order under this section shall not require the removal of any building lawfully in use at the date of the making of such order.

General rules for stores.

17. In every gunpowder store the following general rules shall be observed; that is to say,

(1.) The provisions of an order in council relating to stores, so far as they apply to such store, shall be duly observed:

(2.) There shall not be at the same time in the store an amount of gunpowder exceeding the amount specified in the license; and

(3.) The store shall be used only for the keeping of gunpowder, and receptacles for or tools or implements for work connected with the keeping of such gunpowder; and

(4.) The interior of the store, and the benches, shelves, and fittings therein, shall be so constructed or so lined or covered as to prevent the exposure of any iron or steel and the detaching of any grit, iron, steel, or similar substance, in such manner as to come into contact with the gunpowder, and such interior, benches, shelves, and fittings shall, so far as is reasonably practicable, be kept free from grit, and otherwise clean; and

(5.) The store shall have attached thereto a sufficient lightning conductor (*b*) unless it is made by excavation or is licensed for less than one thousand pounds of gunpowder; and

(6.) Before repairs are done to or in any part of a store, the store shall, so far as is practicable, be cleaned by the removal of all gunpowder and the thorough washing out of the store; and after such cleaning, these rules shall cease to apply to the store until gunpowder is again taken there; and

(7.) Except after such cleaning, all tools and implements used in or in any repairs to the store shall be made only of wood, copper, or brass, or some soft metal or material, or shall be covered with some safe and suitable material; and

(8.) Due provision shall be made, by the use of suitable working clothes without pockets, suitable shoes, searching, and

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(*b*) It was decided under the repealed Act, 23 & 24 Vict. c. 139, s. 2, par. 9, that gunpowder manufacturers who kept gunpowder in a store magazine without having provided lightning conductors, could not be proceeded against under section 4 for keeping gunpowder contrary to the provisions of the Act; *Eliott* v. *Majendie*, L. R. 7 Q. B. 429.

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otherwise, or by some of such means, for preventing the introduction into the store of fire, lucifer matches, or any substance or article likely to cause explosion or fire, or any iron, steel, or grit; but this rule shall not prevent the introduction of an artificial light of such construction, position, or character as not to cause any danger of fire or explosion; and

(9.) No person shall smoke in any part of the store; and

(10.) A person under the age of sixteen years shall not be employed in or enter the store, except in the presence and under the supervision of some grown-up person.

In the event of any breach (by any act or default) of the general rules in any store,—

(*a.*) All or any part of the gunpowder in respect to which or being in the store when the offence was committed may be forfeited; and

(*b.*) The occupier shall be liable to a penalty not exceeding ten pounds, and in addition (in the case of a second offence) ten pounds for every day during which such breach continues.

Non-transferability, renewal, and forms of store licenses.

18. A store license shall be valid only for the person named in it, and shall annually, unless the circumstances have so changed that the grant of a new license would not be authorized by this Act, on application by post or otherwise, and payment of such fee, not exceeding one shilling, as may be from time to time fixed by the local authority, be renewed by that authority, by endorsement or otherwise, for that year, and unless so renewed shall expire.

Store licenses shall be in the form from time to time directed by the secretary of state.

Special rules for regulation of workmen in stores.

19. Every occupier of a gunpowder store may, with the sanction of the secretary of state make, and when made may, with the like sanction, repeal, alter, or add to, special rules for the regulation of the persons managing or employed in or about such store, with a view to secure the observance of this Act therein, and the safety and proper discipline of the said persons and the safety of the public.

There may be annexed to any breach of special rules made in pursuance of this section such penalties, not exceeding forty shillings for each offence, as may be deemed just.

Application of Act to existing Stores for Gunpowder.

Definition and continuing certificate for existing stores which are to be subject to this Act.

20. Any magazine established without a license from a local authority in pursuance of the Gunpowder Act, 1860, or of any enactment repealed by that Act, for the use of any mine, quarry, colliery, or factory of safety-fuzes, and in use at the passing of this Act, is in this Act referred to as an existing gunpowder store.

An existing gunpowder store shall not require a continuing certificate as a magazine from the secretary of state, but shall require a continuing certificate from the local authority, and if such certificate is not applied for and obtained in manner provided by this Act, shall not be deemed to be a lawfully existing store.

The occupier of the store desirous of obtaining a continuing certificate shall, before the expiration of three months after the commencement of this Act, send an application for such certificate to the local authority, stating his name, address, and calling, and the situation

and construction of the store, and accompanied by such particulars respecting the store as may be necessary to enable the local authority to make out the certificate. Section 20.

The local authority upon receiving such application shall, as soon as practicable, on payment of such fee, not exceeding half-a-crown, as may be fixed by that authority, grant the continuing certificate, inserting therein such particulars as appear to them to be sufficient to identify the store, and inserting the maximum amount of gunpowder which the store is to be limited to hold, and such amount shall be the maximum amount which the store was capable of holding on the first day of January one thousand eight hundred and seventy-five, or such less amount as is limited by the regulations below in this section mentioned.

The regulations in Part Two of the first schedule to this Act shall apply to every store to which a continuing certificate is granted, as if they were contained in an order in council under this Act relating to stores.

For the purposes of this Act a continuing certificate for a store shall, save as otherwise expressly provided, be deemed to be a license, and the store a store licensed under this Act, and the provisions of this Act shall be construed accordingly.

Provided that—

(1.) The store shall not be enlarged, or added to, or so altered as to be of a less secure construction, and any breach of this proviso shall be deemed to be a breach of the general rules relating to stores; and

(2.) The continuing certificate shall not be limited in duration, but if the business carried on in the store is discontinued, and either such discontinuance continues for a period of twelve months or more, or the store is used for another purpose, such store shall cease to be deemed an existing gunpowder store.

Nothing in this section shall prevent the obtaining for any existing gunpowder store of a license from the local authority under this Act, as in the case of a new store, and a store for which such license is obtained shall, whether a continuing certificate has or has not been previously obtained for the same, cease to be deemed an existing gunpowder store.

The occupier of an existing gunpowder store may, until the expiration of the time within which he is required by this section to send to the local authority an application for a continuing certificate, and if he has sent such an application as is required by this section may, until the expiration of six months after the expiration of the said time, or any earlier date at which he obtains such certificate, carry on his business in such store in like manner as if this Act had not passed.

RETAIL DEALING WITH GUNPOWDER.

Registration and Regulation of Registered Premises.

21. A person desirous of registering with the local authority any premises for the keeping of gunpowder shall register his name and calling, and the said premises (in this Act referred to as his registered premises) in such manner and on payment of such fee, not exceeding one shilling, as may be directed by the local authority. Registration of premises with local authority (*a*).

(*a*) Section 50 enacts that a person shall not be required to take out a license or to register premises for the keeping of percussion caps or safety

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Such registration shall be valid only for the person registered and shall be annually renewed by sending by post or otherwise notice of such renewal to the local authority, together with such fee, not exceeding one shilling, as may be fixed by that authority.

General rules for registered premises (*a*).

22. The following general rules shall be observed with respect to registered premises :

(1.) The gunpowder shall be kept in a house or building (*b*), or in a fire-proof safe, such safe if not within a house or building, to be at a safe distance from any highway, street, public thoroughfare, or public place ; and

(2.) The amount of gunpowder on the same registered premises shall not—

(*a.*) If it is kept in a substantially constructed building exclusively appropriated for the purpose and detached from a dwelling-house, or in a fire-proof safe outside a dwelling house, and detached therefrom, and at a safe distance from any highway, street, public thoroughfare, or public place, exceed two hundred pounds ; and (*b*)

(*b.*) If it is kept inside a dwelling house, or in any building other than as last aforesaid, exceed fifty pounds, unless it is kept in a fire-proof safe within such house or building, in which case the amount shall not exceed one hundred pounds ; and

(3.) An article or substance of an explosive or highly inflammable nature shall not be kept in a fire-proof safe with the gunpowder, and in every case shall be kept at a safe distance from the gunpowder or the safe containing the same ; and

(4.) Neither the building exclusively appropriated for the purpose of keeping the gunpowder nor the fire-proof safe shall have any exposed iron or steel in the interior thereof ; and

(5.) All gunpowder exceeding one pound in amount shall be kept in a substantial case, bag, canister, or other receptacle made and closed so as to prevent the gunpowder from escaping.

In the event of any breach (by any act or default) of such general rules in any registered premises,—

(*a.*) All or any part of the gunpowder in respect to which, or being in any house, building, place, safe, or receptacle in respect to which the offence was committed may be forfeited ; and

(*b.*) The occupier shall be liable to a penalty not exceeding two shillings for every pound of gunpowder in respect of which or being on the premises in which the offence was committed.

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fuzes for blasting, or fog signals kept by any railway company for use on the railway, or any prescribed explosive ; and section 41 contains an exemption in favour of safety cartridges therein provided.

(*a*) The 6th and 7th sections of the repealed Act 23 & 24 Vict. c. 139, were held to apply only to the keeping by manufacturers of the articles named, and a gunmaker who sold wadded cartridges manufactured by others was held not to be within the enactment ; *Webley* v. *Woolley*, L. R. 7 Q. B. 61.

(*b*) Where any provision of the Act limits the amount of gunpowder, &c., to be allowed in any building at any one time, all gunpowder, &c., within the radius of 20 yards from the building in course of removal from or to the building for the supply and work thereof, shall be deemed to be within the building.

Supplemental Provisions.

Precautions against fire or explosion to be taken by occupier.

23. The occupier of every factory, magazine, store, and registered premises for gunpowder, and every person employed in or about the same, shall take all due precaution for the prevention of accidents by fire or explosion in the same, and for preventing unauthorized persons having access to the factory, magazine, or store, or to the gunpowder therein or in the registered premises, and shall abstain from any act whatever which tends to cause fire or explosion and is not reasonably necessary for the purpose of the work in such factory, magazine, store, or premises.

Any breach (by any act or default) of this section in any factory, magazine, store or registered premises shall be deemed to be a breach of the general rules applying thereto.

Explanation as to quantities of gunpowder allowed in buildings.

24. Where any provision of this Act limits the quantity of gunpowder or ingredients of gunpowder to be allowed in any building at any one time, all gunpowder and ingredients within the radius of twenty yards from the building and in course either of removal from the building, or of removal to the building for the supply and work thereof, shall be deemed to be in the building :

Provided that, if while the gunpowder or ingredients so in course of removal are within the radius, every machine and manufacturing process in the building is wholly stopped, there may, in addition to the quantity so allowed as aforesaid to be in the building, be within the radius a further quantity of gunpowder and ingredients so in course of removal as aforesaid, not exceeding the quantity specified in that behalf in the license, or in the case of an existing building in a lawfully existing factory for gunpowder ten hundred weight, or any less quantity so allowed as aforesaid to be in the building.

Where any provision of this Act limits the quantity of gunpowder or ingredients of gunpowder to be allowed in any machine at any one time, but does not limit the quantity to be in the building containing such machine, the foregoing provisions of this section shall apply so far as circumstances admit, as if such machine were a building.

Where the quantity allowed to be in any building is limited to what is required for the immediate supply and work of such building, or by words not specifying the exact quantity, a government inspector who considers that the quantity in any such building is in excess, may, after hearing the explanation of the occupier, require the occupier to diminish such quantity to the maximum named in the requisition.

The occupier, if he feel aggrieved by such requisition, may require the matter to be referred to arbitration in manner provided by this Act.

The exact quantity to be allowed in such building shall be determined by the requisition, or if the matter is referred to arbitration, by the award.

Regulations as to arbitration.

25. An occupier authorized by this Act to require any matter to be referred to arbitration may, within one month after receiving the requisition, notice, or document relating to the matter to be so referred, send an objection thereto to the secretary of state ; and if the cause of such objection is not, within one month after such objection is received by the secretary of state, removed by the secretary of state waiving or varying the said requisition, notice, document,

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or matter, or otherwise (which the secretary of state is hereby authorized to do), such occupier may, by notice sent within seven days after the expiration of the said month to the secretary of state, require the matter to be referred to arbitration, and the date of the receipt by the secretary of state of the last mentioned notice shall be deemed to be the date of the reference.

Arbitrations under this Act shall be conducted in manner provided by the second schedule to this Act.

Fees for licenses.

26. There shall be payable in respect of licenses and continuing certificates granted by the secretary of state such fees as may be from time to time fixed by him with the consent of the treasury, not exceeding the fees in the third schedule to this Act, and if no fee is fixed, the fees mentioned in the said schedule.

Such fees shall be taken and paid into the receipt of Her Majesty's exchequer in such manner as the treasury may from time to time direct, and shall be carried to the consolidated fund.

The secretary of state may also require any applicant for a new license to pay such sum as the secretary of state may think reasonable for expenses incurred upon any inquiry made by order of the secretary of state with respect to the grant of such license.

When the local authority do not fix any fee which they are authorised by this Act to fix, the fee payable shall be the maximum fee which such authority are authorized to fix.

The fees payable to the local authority in respect of any license, certificate, or otherwise in pursuance of this Act, shall, where the clerk of the local authority is not wholly paid by fees, be carried to the credit of the local rate, or otherwise disposed of as such local authority may direct, and where such clerk is wholly paid by fees, shall, unless the local authority otherwise direct, be paid to such clerk.

Adjoining places occupied together to be one place.

27. For the purposes of the provisions of this Act with respect to the manufacture and keeping of gunpowder, all buildings and places adjoining each other and occupied together shall be deemed to be the same factory, magazine, store, or premises, and shall accordingly be included in one license or one registration.

Register of store licenses and registered premises to be kept by local authority.

28. The local authority shall cause registers of all store licenses granted by and of all premises registered with them under this Act to be kept in such form and with such particulars as they may direct.

The local authority shall, when so required by the secretary of state, send to him, within the time fixed by such requisition, a copy of such register or any part thereof, and in default the clerk of such authority, and also the authority if they are in fault, shall be liable to a penalty not exceeding one pound for every day during which such default continues.

A ratepayer within the area of the local authority, and a licensee or person registered under this Act, upon payment of a fee of one shilling, and a government inspector, and an officer appointed by any local authority for the purposes of this Act, and an officer of police, without payment, shall be entitled at all reasonable times to inspect and take copies of or extracts from any register kept in pursuance of this section; and the clerk of the local authority and every other person who fails to allow such inspection or taking copies of or extracts from the same, or demands any unauthorized fee therefor,

shall be liable to a penalty not exceeding one pound for each offence. Section 28.

Provision in case of death, &c., of occupier of store or registered premises.

29. If the occupier of a store or registered premises dies or becomes bankrupt, or has his affairs liquidated by arrangement, or becomes mentally incapable or otherwise disabled, the person carrying on the business of such occupier shall not be liable to any penalty or forfeiture under this Act for carrying on the business and acting under the license or registration during such reasonable time as may be necessary to allow him to obtain a store license from or to register with the local authority, so that he otherwise conform with the provisions of this Act.

Sale of Gunpowder.

Restriction on sale of gunpowder in highways, &c.

30. Gunpowder shall not be hawked, sold, or exposed for sale upon any highway, street, public thoroughfare, or public place.

If any gunpowder is hawked, sold, or exposed for sale in contravention of this section—

(1.) The person hawking, selling, or exposing for sale the same, shall be liable to a penalty not exceeding forty shillings; and

(2.) All or any part of the gunpowder which is so hawked or exposed for sale, or is found in the possession of any person convicted under this section, may be forfeited.

Penalty for sale of gunpowder to children.

31. Gunpowder shall not be sold to any child apparently under the age of thirteen years; and any person selling gunpowder in contravention of this section shall be liable to a penalty not exceeding five pounds.

Sale of gunpowder to be in closed packages labelled.

32. All gunpowder exceeding one pound in weight, when publicly exposed for sale or sold, shall be in a substantial case, bag, canister, or other receptacle made and closed so as to prevent the gunpowder from escaping, and (except when the same is sold to any person employed by or on the property occupied by the vendor for immediate use in the service of the vendor or on such property) the outermost receptacle containing such gunpowder shall have affixed the word "gunpowder" in conspicuous characters by means of a brand or securely attached label, or other mark.

If any gunpowder is sold or exposed for sale in contravention of this section—

1. The person selling or exposing for sale the same shall be liable to a penalty not exceeding forty shillings; and
2. All or any part of the gunpowder so exposed for sale may be forfeited.

Conveyance of Gunpowder.

General rules as to packing of gunpowder for conveyance.

33. The following general rules shall be observed with respect to the packing of gunpowder for conveyance:

1. The gunpowder, if not exceeding five pounds in amount shall be contained in a substantial case, bag, canister, or other receptacle, made and closed so as to prevent the gunpowder from escaping; and
2. The gunpowder, if exceeding five pounds in amount, shall be contained either in a single package or a double package. A

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single package shall be a box, barrel, or case of such strength, construction, and character as may be for the time being approved by the government inspector as being of such strength, construction, and character that it will not be broken or accidentally opened, or become defective or insecure whilst being conveyed, and will not allow the gunpowder to escape. If the gunpowder is packed in a double package the inner package shall be a substantial case, bag, canister, or other receptacle made and closed so as to prevent the gunpowder from escaping, and the outer package shall be a box, barrel, or case of wood or metal or other solid material, and shall be of such strength, construction, and character that it will not be broken or accidentally opened, or become defective or insecure whilst being conveyed, and will not allow the gunpowder to escape ; and

3. The interior of every package, whether single or double, shall be kept free from grit and otherwise clean ; and
4. Every package, whether single or double, when actually used for the package of gunpowder, shall not be used for any other purpose ; and
5. There shall not be any iron or steel in the construction of any such single package or inner or outer package, unless the same is effectually covered with tin, zinc, or other material ; and
6. The amount of gunpowder in any single package, or if there is a double package in any one outer package, shall not exceed one hundred pounds, except with the consent of and under conditions approved by a government inspector ; and
7. On the outermost package there shall be affixed the word "gunpowder" in conspicuous characters by means of a brand or securely attached label or other mark.

In the event of any breach (by any act or default) of any general rule in this section, the gunpowder in respect of which the breach is committed may be forfeited, and the person guilty of such breach shall be liable to a penalty not exceeding twenty pounds.

The secretary of state may from time to time make, and when made, repeal, alter, and add to, rules for the purpose of rescinding, altering, or adding to the general rules contained in this section, and the rules so made by the secretary of state shall have the same effect as if they were enacted in this section.

Bye-laws by harbour authority as to conveyance, loading, &c., of gunpowder.

34. Every harbour authority (*a*) shall, with the sanction of the board of trade, make bye-laws for regulating the conveyance, loading, and unloading of gunpowder within the jurisdiction of the said authority, and in particular for declaring or regulating all or any of the following matters within the jurisdiction of the said authority ; namely,

1. Determining the notice to be given by ships and boats conveying, loading, or unloading gunpowder as merchandise within the said jurisdiction ; and
2. Regulation and navigation and place of mooring of such ships and boats ; and
3. Regulating, subject to the general rules with respect to packing in this Act contained, the mode of stowing and keeping gunpowder on board any such ship or boat, and of giving notice

(*a*) See definition of "harbour authority," section 108.

by brands, labels, or otherwise of the nature of the package containing the gunpowder; and

4. Regulating the description, construction, fitting up, and licensing of the ships, boats, or carriages to be used for the conveyance of gunpowder, and the licensing and dress of the persons having charge thereof; and
5. Prohibiting or subjecting to conditions and restrictions the conveyance of gunpowder with any explosive or any articles or substances, or in passenger ships, boats, trains, or carriages; and
6. Prohibiting in cases where the loading or unloading of gunpowder within the jurisdiction of such authority appears to be specially dangerous to the public such loading or unloading, and fixing the places and times at which the gunpowder is to be loaded or unloaded, and the quantity to be loaded or unloaded or conveyed at one time or in one ship, boat, or carriage; and
7. Regulating the mode of and the precautions to be observed in conveying any gunpowder, and in the loading or unloading any ship, boat, or carriage conveying gunpowder as merchandise, and the time during which gunpowder may be kept during such conveyance, loading, or unloading; and
8. Fixing the times at which lights or fires are to be allowed or not allowed on board such ships or boats, as before mentioned, or at which a constable or officer of the harbour authority is to be on board them; and
9. Providing for the publication and supply of copies of the bye-laws; and
10. Enforcing the observance of this Act both by their own servants and agents and also by other persons when within the said jurisdiction; and
11. Generally for protecting, whether by means similar to those above mentioned or not, persons and property from danger.

The penalties to be annexed to any breach or attempt to commit any breach of any such bye-laws may be all or any of the following penalties, and may be imposed on such persons and graduated in such manner as may be deemed just, according to the gravity of the offence, and according as it may be a first or second or other subsequent offence, that is to say, pecuniary penalties not exceeding twenty pounds for each offence, and ten pounds for each day during which the offence continues, and forfeiture of all or any part of the gunpowder in respect of which, or found in the ship, boat, or carriage in respect of which, the breach of bye-law has taken place.

In the event of any breach of a bye-law under this section in the case of any ship, boat, carriage, or gunpowder, whether there has or has not been any conviction for such breach, it shall be lawful for the harbour-master, or other officer named in the bye-laws, or any person acting under the orders of the harbour authority, to cause such ship, boat, carriage, or gunpowder, at the expense of the owner thereof, to be removed to such place or otherwise dealt with in such manner as may be in conformity with the bye-laws, and all expenses incurred in such removal may be recovered in the same manner as a penalty under this section, and any person resisting such harbour-master or officer or other person in such removal shall be liable to the same penalties as a person is liable to for obstructing the harbour-master in the execution of his duty.

On any part of the coast of the United Kingdom or in any tidal water for which there is no harbour authority, the board of trade

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may, if they think it expedient, make bye-laws under this section for that part or water as if it were a harbour and they were the harbour authority, and such bye-laws shall be deemed to have been made by a harbour authority with the sanction of the board of trade; and they may by such bye-laws define the area within which such bye-laws are to be observed, and the authorities and officers by whom such bye-laws are to be enforced and carried into effect within such area, and every such authority and officer shall for the purposes of this Act, other than making bye-laws or assenting to a site for a new factory or magazine, have the same power within the said area as a harbour authority and an officer of a harbour authority have respectively under this Act in a harbour.

Bye-laws by railway and canal company as to conveyance, loading, &c., of gunpowder.

35. Every railway company and every canal company over whose railway or canal any gunpowder is carried, or intended to be carried, shall, with the sanction of the board of trade, make bye-laws for regulating the conveyance, loading, and unloading of such gunpowder on the railway or canal of the company making the bye-laws, and in particular for declaring and regulating all or any of the following matters in the case of such railway or canal; that is to say,

1. Determining the notice to be given of the intention to send gunpowder for conveyance as merchandise on the railway or canal; and
2. Regulating, subject to the general rules with respect to packing in this Act contained, the mode of stowing and keeping gunpowder for conveyance and of giving notice by brands, labels, or otherwise of the nature of the package containing the gunpowder; and
3. Regulating the description and construction of carriages, ships, or boats to be used in the conveyance of gunpowder; and
4. Prohibiting or subjecting to conditions and restrictions the conveyance of gunpowder with any explosive, or with any articles or substances, or in passenger trains, carriages, ships, or boats; and
5. Fixing the places and times at which the gunpowder is to be loaded or unloaded, and the quantity to be loaded or unloaded or conveyed at one time, or in one carriage, ship, or boat; and
6. Determining the precautions to be observed in conveying gunpowder, and in loading and unloading the carriages, ships, and boats used in such conveyance, and the time during which the gunpowder may be kept during such conveyance, loading, and unloading; and
7. Providing for the publication and supply of copies of the bye-laws; and
8. Enforcing the observance of this Act both by their servants and agents and also by other persons when on the canal or railway of such company; and
9. Generally for protecting, whether by means similar to those above mentioned or not, persons and property from danger.

Such bye-laws, when confirmed by the board of trade, shall apply to the railway, canal, agents, and servants of the company making the same, and to the persons using such railway or canal, or the premises connected therewith and occupied by or under the control of such company.

The penalties to be annexed to any breach or attempt to commit any breach of any such bye-laws may be all or any of the following

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penalties, and may be imposed on such persons and graduated in such manner as may be deemed just, according to the gravity of the offence, and according as it may be a first, second, or other subsequent offence, that is to say, pecuniary penalties not exceeding twenty pounds for each offence, and ten pounds for each day during which the offence continues, and forfeiture of all or any part of the gunpowder in respect of which, or being in the carriage, ship, or boat or train of carriages, ships, or boats in respect of which, the breach of bye-law has taken place.

Bye-laws as to wharves in which gunpowder is loaded or unloaded.

36. The occupier of every wharf or dock on or in which gunpowder is loaded or unloaded (if such loading or unloading is not otherwise subject to any bye-laws under this Act) may, and if so required by the secretary of state shall, from time to time, with the sanction of the secretary of state, make bye-laws for regulating the loading and unloading of gunpowder on or in such wharf or dock, and in particular for declaring or regulating all or any of the matters which can be declared or regulated in the case of any wharf or dock within the jurisdiction of a harbour authority by bye-laws made by such authority in pursuance of this Act.

The penalties to be annexed to any breach, or attempt to commit any breach, of any such bye-laws may be all or any of the following penalties, and may be imposed on such persons and graduated in such manner as may be deemed just, according to the gravity of the offence, and according as it may be a first or second or other subsequent offence, that is to say, pecuniary penalties not exceeding twenty pounds for each offence, and ten pounds for each day during which the offence continues, and forfeiture of all or any part of the gunpowder in respect of which, or found on the wharf or in the dock or part of the wharf or dock in respect of which, the breach of bye-law has taken place.

Any bye-laws made in pursuance of this section may, and if required by the secretary of state shall, be rescinded, altered, or added to by bye-laws made by the occupier, with the sanction of the secretary of state.

If an occupier is required by the secretary of state to make bye-laws under this section for any matter, and fail within three months after such requisition to comply therewith to the satisfaction of the secretary of state, the secretary of state may make such bye-laws, which shall have effect as if made by the occupier with the sanction of the secretary of state.

Where by reason of a wharf being a public wharf or otherwise, there is no occupier thereof, or the occupier thereof is unknown, the secretary of state may make bye-laws with respect to such wharf in like manner as if the occupier had failed to comply with his requisition : Provided that where such wharf abuts on any harbour, canal, or railway, the harbour authority or canal or railway company shall have the same power, and, if so required by the secretary of state, shall be under the same obligation to make bye-laws under this section for such wharf as if they were the occupiers thereof.

Bye-laws as to conveyance by road or otherwise, or loading of gunpowder.

37. The secretary of state may from time to time make, and when made, rescind, alter, or add to, bye-laws for regulating the conveyance, loading, and unloading of gunpowder in any case in which bye-laws made under any other provision of this Act do not apply, and in particular for declaring or regulating all or any of the following matters : that is to say,

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1. Regulating the description and construction of carriages to be used in the conveyance of gunpowder as merchandise; and
2. Prohibiting or subjecting to conditions and restrictions the conveyance of gunpowder with any explosive, or with any articles or substances, or in passenger carriages; and
3. Fixing the places and times at which the gunpowder is to be loaded or unloaded, and the quantity to be loaded or unloaded or conveyed at one time or in one carriage; and
4. Determining the precautions to be observed in conveying gunpowder, and in loading and unloading the carriages used in such conveyance, and the time during which the gunpowder may be kept during such conveyance, loading and unloading; and
5. Providing for the publication and supply of copies of the bye-laws; and
6. Generally for protecting, whether by means similar to those above mentioned or not, persons or property from danger; and
7. Adapting on good cause being shown the bye-laws in force under this section to the circumstances of any particular locality.

The penalties to be annexed to any breach, or attempt to commit any breach, of any such bye-laws may be all or any of the following penalties, and may be imposed on such persons and graduated in such manner as may be deemed just, according to the gravity of the offence, and according as it may be a first, second, or other subsequent offence, that is to say, pecuniary penalties not exceeding twenty pounds for each offence, and ten pounds for each day during which the breach continues, and forfeiture of all or any part of the gunpowder in respect of which, or being in the carriage in respect of which, the breach of bye-law has taken place.

For the purpose of any mode of conveyance which is not a conveyance by land this section shall be construed as if ship and boat were included in the term carriage.

Confirmation and publication of bye-laws.

38. Any recommendation to Her Majesty in council, any general rules with respect to packing, and any bye-laws which is or are proposed to be made under this Act by a secretary of state or the board of trade shall, before being so made, be published in such manner as the secretary of state or the board of trade, as the case may be, may direct as being in his or their opinion sufficient for giving information thereof to all local authorities, corporations, and persons interested.

The bye-laws framed by any railway company, canal company, or harbour authority under this Act shall, before being sanctioned by the board of trade, be published in such manner as may be directed by the board of trade, with a notice of the intention of such company or authority to apply for the confirmation thereof, and may be sanctioned by the board of trade with or without any omission, addition, or alteration, or may be disallowed.

Every such bye-law may be from time to time added to, altered, or rescinded by a bye-law made in like manner and with the like sanction as the original bye-law.

The secretary of state or the board of trade, as the case may be, shall receive and consider any objections or suggestions made by any local authority, corporation, or persons interested with respect to any recommendation, general rules, or bye-laws published in pursuance

of this section, and may, if it seem fit, amend such recommendation, general rules, or bye-laws with a view of meeting such objections or suggestions without again publishing the same. Section 38.

PART II.

Law relating to other Explosives.

Application of Part I. to other Explosives.

39. Subject to the provisions hereafter in this part of this Act contained, Part One of this Act relating to gunpowder shall apply to every other description of explosive, in like manner as if those provisions were herein re-enacted with the substitution of that description of explosive for gunpowder. Part I. relating to gunpowder applied to other explosives.

40. The following modifications and additions shall be made in and to Part One of this Act as applied to explosives other than gunpowder: Modification of Part I. as applied to explosives other than gunpowder.

(1.) The draft license for a factory or magazine submitted by an applicant to the secretary of state shall specify such particulars as the secretary of state may require; and

(2.) The prescribed general rules shall be substituted for the general rules in Part One of this Act relating to factories, magazines, stores, and registered premises respectively; but no such general rule shall require the removal of any building or work in use at the date of the order in council by which such rule is made;

(3.) The secretary of state may from time to time alter the general rules relating to packing contained in Part One of this Act for the purpose of adapting the same to the packing of any explosive other than gunpowder; and

(4.) For the maximum amount limited by Part One of this Act to be kept for private use and not for sale, or in a store, and for the minimum amount limited by Part One of this Act to be exposed for sale or sold otherwise than in a substantial case, box, canister, or other receptacle as therein mentioned, there shall be substituted in the case of explosives other than gunpowder the following amounts (*a*) namely,

(*a*) Where such explosive consists of safety cartridges made with gunpowder, an amount containing not more than five times the maximum or minimum amount of gunpowder, as the case may be, above mentioned; and

(*b*) In the case of any other explosive, the prescribed amount; and

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(*a*) See *Newby* v. *Sharpe*, L. R. 8 Ch. Div. 39, where the landlord let premises for storing cartridges, and after the passing of this Act making it illegal to store cartridges and gunpowder in one building, removed the plaintiff's cartridges, it was held, that the grant of the liberty to the tenant by the landlord to store cartridges, did not imply a warranty of the legality of storing them.

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(5.) Two or more descriptions of explosives shall not be kept in the same store or registered premises, except such descriptions as may be prescribed in that behalf; and, when so kept, shall be kept subject to the prescribed conditions and restrictions; and

(6.) Where any explosive, other than gunpowder, is allowed to be kept in the same store or registered premises with gunpowder, the maximum amount of gunpowder to be kept therein shall be the prescribed amount in lieu of the amount fixed by Part One of this Act; and

(7.) Where any explosive, other than gunpowder, is allowed to be kept in the same magazine, store, or registered premises with gunpowder, the prescribed general rules shall be observed instead of the general rules in Part One of this Act; and

(8.) There shall be on the outermost package containing the explosive in lieu of the word "gunpowder" the name of the explosive, with the addition of the word "explosive," and if such name is materially false the person selling or exposing for sale such explosive, and also the owner of the explosive, shall be liable to a penalty not exceeding fifty pounds:

(9.) With respect to the importation from any place out of the United Kingdom of either dynamite or gun-cotton, or any explosive (other than gunpowder, cartridges made with gunpowder, percussion caps, fireworks, and any prescribed explosive), the following provisions shall have effect; that is to say,

(*a.*) The owner and master of any ship having on board any such explosive shall not permit the same to be unloaded and delivered to any person who does not hold a license to import the same (in this Act called an importation license) from the secretary of state, and any transhipment shall for the purpose of this section be deemed to be delivery; and

(*b.*) The secretary of state may grant an importation license for any such explosive, and may annex thereto any prohibitions and restrictions with respect to the composition and quality of the explosive, and the unloading, landing, delivery, and conveyance thereof, and such further provisions and restrictions as he may think fit, for the protection of the public from danger; and

(*c.*) The license shall be of such duration as the secretary of state may fix, and shall be available only for the person named in the license; and

(*d.*) In the event of any breach by any act or default of the provisions of this section with respect to the importation of an explosive, or of the provisions of any importation license, all or any part of the explosive with respect to which such breach is committed, or being in any ship or boat in connexion with which such breach is committed, may be forfeited, and the owner and master of such ship or boat, and the licensee or person to whom the explosive is delivered, shall each be liable to a penalty not exceeding one hundred pounds, and to a further

penalty not exceeding two shillings for every pound of such explosive; and

(*e.*) The commissioners of customs and their officers shall have the same power with respect to any such explosive, and the ship containing the same, as they have for the time being with respect to any article on the importation of which restrictions are for the time being imposed by the law relating to the customs, and the ship containing the same, and the enactments for the time being in force relating to the customs or any such article or ship shall apply accordingly.

Exemption of making and carrying safety cartridges for private use.

41. Nothing in this act shall apply to the filling or conveying, for private use and not for sale, of any safety cartridges (*a*) to the amount allowed by this Act to be kept for private use.

Extension of 18 & 19 Vict. c. 119, s. 29, and 36 & 37 Vict. c. 85, ss. 23–27, to all explosives.

42. Section twenty-nine of the Passengers Act, 1855, and sections twenty-three to twenty-seven, both inclusive, of the Merchant Shipping Act, 1873, shall apply to every explosive within the meaning of this Act in like manner as they apply to gunpowder.

Specially Dangerous Explosives.

Power to prohibit manufacture, importation, storage, and carriage of specially dangerous explosives.

43. Notwithstanding anything in this Act, Her Majesty from time to time, by order in council, may prohibit, either absolutely, or except in pursuance of a license of the secretary of state under this Act, or may subject to conditions or restrictions the manufacture, keeping, importation from any place out of the United Kingdom, conveyance, and sale, or any of them, of any explosive which is of so dangerous a character that, in the judgment of Her Majesty, it is expedient for the public safety to make such order.

Provided that such order shall not absolutely prohibit anything which may be lawfully done in pursuance of any continuing certificate under this Act.

Any explosive manufactured or kept in contravention of any such order shall be deemed to be manufactured or kept, as the case may be, in an unauthorized place.

Any explosive conveyed in contravention of any such order shall be deemed to be conveyed in contravention of a bye-law made under this Act with respect to the conveyance of explosives.

If any explosive is imported or sold in contravention of any such order,—

1. All or any part of such explosive may be forfeited; and
2. The owner or master of the ship in which it was imported shall be liable to a penalty not exceeding ten shillings for every pound of such explosive brought in the ship; and
3. The person to whom it was delivered and the person selling the same shall be liable to a penalty not exceeding ten shillings for every pound of such explosive delivered or sold or found in his possession.

The commissioners of customs and their officers shall have the same power with respect to any such explosive, and the ship containing the same, as they have for the time being with respect to any

(*a*) See definition of "safety cartridge," section 108.

Section 43. article prohibited to be imported by the law relating to the customs, and the ship containing the same, and the enactments for the time being in force relating to the customs and any such article or ship shall apply accordingly.

Provisions in favour of certain Manufacturers and Dealers.

Provision in favour of makers, &c., of blasting cartridges.

44. The occupier of a factory for any explosive shall not be required by this Act to take out a factory license for making up on such factory the explosive made thereon into cartridges or charges for cannon or blasting not containing within themselves their own means of ignition.

The occupier of any magazine, store, or registered premises for keeping any explosive may keep that explosive when made up into such cartridges or charges as above in this section mentioned, as if it were not so made up, and the provisions of this Act with respect to the keeping of any explosive shall apply to the keeping of that explosive when made up into the said cartridges or charges, in like manner as if the explosive were not so made up.

Provision in favour of makers of new explosive for experiment.

45. The occupier of a factory for any explosive who manufactures a new explosive or new form of explosive similar to the one specified in his license, shall not be deemed to be manufactured the same in an unauthorized place if he manufacture the same on a small scale, and exclusively for the purpose of trial and not for sale, and he send notice of the same, as soon as he has manufactured it, to the secretary of state, and if he observe the provisions of this Act, so far as they are applicable.

Provision in favour of gunmakers, &c., making cartridges.

46. The occupier of a magazine, store, or registered premises for any explosive shall not be required by this Act to take out a factory license by reason that in connexion with such magazine, store, or premises he fills for sale or otherwise any cartridge for small arms with the said explosive, so that he observe the following regulations; namely,

(1.) There shall not be in the room in which such filling is being carried on more than five pounds of gunpowder, or the prescribed amount of any other explosive, except it is made up into safety cartridges; and

(2.) Any work unconnected with the making of the cartridges shall not be carried on in the room while such filling is being carried on; and

(3.) There shall not be in the room while such filling is being carried on any fire nor any artificial light, except a light of such construction, position, or character as not to cause any danger of fire or explosion; and

(4.) In the case of a magazine or store, the room in which the filling is carried on shall be detached from the magazine or store, but in the immediate neighbourhood thereof, and at such distance therefrom as may be specified in the case of a magazine by the license, and in the case of a store by an order in council relating to stores; and

(5.) The occupier shall give notice in the case of a magazine to the secretary of state, and in the case of a store or registered premises to the local authority, that he intends to carry on such filling of cartridges as is allowed by this section.

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Provided that this section shall not, except with the consent of the secretary of state, apply to any magazine or store for which a continuing certificate has been obtained under this Act, which consent the secretary of state, if satisfied that the filling of cartridges in accordance with this section ought (due regard being had to the safety of the public) to be allowed, may grant either absolutely or upon such conditions as he may, under the special circumstances of the case, think expedient to secure the safety of the public.

The regulations in this section and any conditions so made by the secretary of state as last aforesaid, shall be deemed to be general rules under this Act relating to the magazine, store, and registered premises respectively, and the breach of them shall be punished accordingly.

Provision in favour of owners of mines and quarries, as to making charges, &c., for blasting.

47. The occupier of any magazine or store for any explosive shall not be required by this Act to take out a factory license by reason that, in connection with such magazine or store, he, by filling cartridges, making charges, drying, sifting, fitting, or otherwise, adapts or prepares the said explosive for use exclusively in his mine or quarry, or in some excavation or work carried on by him or under his control, so that he observe the following regulations; namely,

(1.) There shall not be in the workshop in which such adaptation or preparation is carried on more than one hundred pounds of gunpowder or the prescribed amount of any other explosive; and

(2.) Any work unconnected with such adaptation or preparation shall not be carried on in the said workshop while such adaptation or preparation is being carried on; and

(3.) The said workshop shall be detached from the magazine or store, but in the immediate neighbourhood thereof, and at such distance therefrom as may be specified in the case of a magazine by the license, and in the case of a store by an order in council relating to stores; and

(4.) An explosive of one description shall not be converted into an explosive of another description, and shall not be unmade or resolved into its ingredients; and

(5.) The occupier shall give notice in the case of a magazine to the secretary of state, and in the case of a store to the local authority, that he intends to carry on such adaptation or preparation as is allowed by this section.

Provided that this section shall not, except with the consent of the secretary of state, apply to any magazine or store for which a continuing certificate has been obtained under this Act, which consent the secretary of state, if satisfied that the adaptation or preparation in accordance with this section ought (due regard being had to the safety of the public) to be allowed, may grant either absolutely or upon such conditions as he may, under the special circumstances of the case, think expedient to secure the safety of the public.

The regulations in this section, and any conditions so made by the secretary of state as last aforesaid, shall be deemed to be general rules under this Act relating to the magazine and store respectively, and the breach of them shall be punished accordingly.

The following general rules shall apply as if the said workshop were a danger building, that is to say, if the adaptation or preparation carried on is of gunpowder only, the general rules with respect to a factory in part one of this Act, and in any other case the prescribed general rules; and the breach of such general rules shall be

Section 47. punished in like manner as the breach of general rules with respect to a factory.

Provision in favour of small firework manufacturer who may obtain a license from the local authority.

48. A firework factory shall not be deemed to be a small firework factory for the purpose of this Act if there is upon the same factory at the same time—

(*a.*) More than one hundred pounds of any explosive other than manufactured fireworks and coloured fires and stars ; or

(*b.*) More than five hundred pounds of manufactured fireworks, either finished or partly finished ; or

(*c.*) More than twenty-five pounds of coloured fires or stars, not made up into manufactured fireworks.

The occupier of a small firework factory shall not be required to obtain a license under part one of this Act for such factory if he has obtained a license from the local authority under this part of this Act.

A person having such license from the local authority who manufactures an explosive (other than nitro-glycerine or any prescribed explosive) for the purpose only of the manufacture of coloured fires or a manufactured firework in accordance with this Act, and does not sell the same except in the form of coloured fires packed in the manner required by this Act, or of a manufactured firework, shall not be deemed to manufacture an explosive in an unauthorized place.

Licensing by local authority and regulation of small firework factories.

49. Any person may apply for a small firework factory license to the local authority at the time and place appointed by such authority, stating his name, address, and calling, and the proposed site and construction of the factory, and the amount and description of explosive he proposes to have therein, and in any building therein ; and the local authority shall, as soon as practicable, if the proposed site, construction of the factory, and amount of explosive is in accordance with the order in council regulating small firework factories, grant to the applicant, on payment of such fee, not exceeding five shillings, as may be fixed by that authority, the license provided for.

The powers of this Act of making orders in council with respect to stores and of prescribing general rules with respect to stores shall extend to making orders in council and prescribing general rules with respect to small firework factories and the buildings thereon ; and any breach (by any act or default) of any such general rule shall involve the same penalties and forfeitures as a breach of a general rule relating to stores.

A small firework factory license shall be valid only for the person named in it, and the provisions of this Act with respect to the renewal, expiration, and form of store licenses, and fees for such renewal, and to special rules for the regulation of persons managing or employed in or about stores, shall apply in like manner as if they were herein enacted, and in terms made applicable to small firework factory licenses and small firework factories respectively.

Keeping without a license and conveyance of percussion caps, &c.

50. A person shall not be required by this Act to take out a license or to register any premises for the keeping of percussion caps, or safety-fuzes for blasting, or fog-signals kept by any railway company for use on the railway of such company, or any prescribed explosive.

It shall not be obligatory on any harbour authority, railway company, canal company, or occupier of a wharf, to make any bye-laws

with respect to the conveyance, loading, or unloading of any explosives to which this section applies. Section 50.

It shall be lawful for Her Majesty, by order in council, to exempt any explosive to which this section applies, or any description thereof, from any other of the provisions of this Act, or to declare that a license shall be required for the keeping of any explosive to which this section applies, or any description thereof, or that bye-laws shall be made with respect to the loading, unloading, and conveyance thereof.

Existing Factories, Magazines, and Stores.

Application of Part I. of the Act to existing factories and magazines.

51. In any continuing certificate for a lawfully existing factory or magazine for any explosive other than gunpowder, the regulations set out in the first schedule to this Act shall not form part of the terms of such certificate, but in lieu thereof the secretary of state shall insert in the certificate as the terms thereof,—

(1.) If the factory or magazine is for dynamite or any substance having nitro-glycerine as one of its component parts or ingredients, the conditions contained in the existing license, with such modifications (if any) as the secretary of state may think necessary in order to bring the same into conformity with this Act, and also any limitation of time for the expiration of the license contained in the existing license, and also the existing power of the secretary of state to revoke the license; and

(2.) In any other case, such terms as the secretary of state may think expedient, having regard to the conditions (if any) contained in the license under which the factory or magazine is established; and such terms shall include any limitation of time contained in such license, but shall not require the removal of any lawfully existing building or work.

If a new license under this Act is obtained for keeping in an existing gunpowder store any explosive other than gunpowder, the continuing certificate of such store shall be determined, and the store shall cease to be deemed to be an existing gunpowder store within the meaning of this Act.

Continuing certificate not required for factory, magazine, or importation license expiring within 12 months, or for stores licensed under Nitro-glycerine Act, 1869.

52. Where the license of a factory or magazine for any explosive other than gunpowder will expire within twelve months after the commencement of this Act, the occupier of such factory or magazine shall not require a continuing certificate under this Act, but until such license expires shall be entitled to use such factory or magazine in like manner as if this Act had not passed, without prejudice nevertheless to any application by him for a license under this Act for such factory or magazine, but after a license under this Act is obtained for the same, or after the expiration of the old license, such factory or magazine shall not be deemed to be a lawfully existing factory or magazine within the meaning of this Act.

The occupier of any magazine licensed at the time of the passing of this Act by a general magazine license under the Nitro-glycerine Act, 1869, shall not require a continuing certificate under this Act, but until the expiration of six months after the commencement of this Act shall be entitled to use such magazine in like manner as if this Act had not passed, without prejudice nevertheless to a license

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under this Act being obtained for the same ; but after a license under this Act is obtained for the same, or after the expiration of the said six months, such license shall determine, and such magazine shall not be deemed to be a lawfully existing magazine or store within the meaning of this Act.

The holder of any importation license under the Nitro-glycerine Act, 1869, shall, until the expiration of six months after the commencement of this Act, be entitled to act under such license in like manner as if this Act had not passed, without prejudice nevertheless to any application by him for an importation license under this Act ; but after such license under this Act is obtained, or after the expiration of the said six months, such existing license shall determine.

PART III.

ADMINISTRATION OF LAW.

GOVERNMENT SUPERVISION.

Inspection.

Appointment of government inspectors.

53. The secretary of state may from time to time by order appoint any fit persons to be inspectors for the purposes of this Act, and assign them their duties, and award them such salaries as the Commissioners of Her Majesty's Treasury may approve, and remove such inspectors, and any such inspector is referred to in this Act as a Government inspector.

Every order appointing an inspector shall be published in the London Gazette.

Disqualification of persons as inspectors.

54. Any person who practises or acts, or is a partner with any person who practises or acts, as a manufacturer, storer, carrier, importer or exporter of or trader or dealer in an explosive, or holds any patent connected with an explosive, or is otherwise directly or indirectly engaged or interested in any such manufacture, storage, conveyance, importation, exportation, trade, dealing, or patent, shall not act as an inspector under this Act.

Powers of government inspectors.

55. A Government inspector shall have power to make such examination and inquiry as may be necessary to ascertain whether this Act is complied with, and for that purpose,—

(1.) He may enter, inspect, and examine any factory, magazine, or store of any explosive, and every part thereof, at all times by day and night, but so as not to unnecessarily impede or obstruct the work in such factory, magazine, or store, and may make inquiries as to the observance of this Act and all matters and things relating to the safety of the public or of the persons employed in or about such factory, magazine, or store ; and

(2.) He may enter, inspect, and examine any premises registered under this Act, and every part thereof, in which any explosive is kept, or is reasonably supposed by him to be kept, at all reasonable times by day ; and

(3.) He may require the occupier of any factory, magazine, store,

Section 55.

or premises which he is entitled, under this section, to enter, or a person employed by such occupier therein, to give him samples of any explosive or ingredients of an explosive therein, or of any substance therein, the keeping of which is restricted or regulated by this Act, or of any substance therein which the inspector believes to be an explosive, or such ingredients or substance.

The occupier of every such factory, magazine, store, and registered premises, his agents and servants, shall furnish the means required by the inspector as necessary for every such entry, inspection, examination, and inquiry.

Any person who fails to permit a government inspector to enter, inspect, examine, or make inquiries in pursuance of this section, or to comply with any requisition of such inspector in pursuance of this section, or who in any manner obstructs such inspector in the execution of his duties under this Act, shall be liable to a penalty not exceeding one hundred pounds for each offence.

Notice by government inspector to remedy dangerous practices, &c., and penalty for non-compliance.

56. If in any matter (which is not provided for by any express provision of this Act) an inspector find any factory, magazine, or store for an explosive, or any part thereof, or any thing or practice therein or connected therewith, to be unnecessarily dangerous or defective, so as in his opinion to tend to endanger the public safety or the bodily safety of any person, such inspector may require the occupier of such factory, magazine, or store to remedy the same.

Where the occupier objects to comply with the requisition he may require the matter to be referred to arbitration in manner provided by this Act.

No person shall be precluded by any contract from doing such acts as may be necessary to comply with a requisition or award under this section; and no person shall be liable under any contract to any penalty or forfeiture for doing those acts if he gave notice of such contract to the inspector at or before the time at which the inspector made the requisition or to the arbitrators before the award was made.

If the occupier fail to comply with the requisition or award within twenty days after the expiration of the time for requiring the matter to be referred to arbitration if there is no reference to arbitration, or if there is such a reference after the date of the award, he shall be liable to a penalty not exceeding twenty pounds for every day during which he so fails to comply.

Provided that the court, if satisfied that the occupier has taken active measures for complying with the requisition or award, but has not, with reasonable diligence, been able to complete the works, may adjourn any proceedings taken before them for punishing such failure, and if the works are completed within a reasonable time in the opinion of the court, no penalty shall be inflicted.

Annual report of government inspectors proceedings.

57. A report of the proceedings under this Act shall be made annually to the secretary of state, by such inspectors and in such manner and form as may be directed by him, and shall be laid before both houses of parliament.

Inspection by railway inspectors or inspectors of Board of Trade.

58. The board of trade may from time to time, by order, direct—

(*a.*) Any person acting under the board as an inspector of railways to inquire into the observance of this Act by any railway company or canal company, and generally to act

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with respect to any railway or canal as an inspector under this Act; or

(*b.*) Any person acting under the board as an inspector or otherwise for the purposes of the Merchant Shipping Act, 1854, or the Acts amending the same (*a*), to inquire into the observance of this Act in any harbour or in the case of any ship, and generally to act in such harbour and with respect to ships as an inspector under this Act.

The board of trade may revoke any such order; and each such inspector shall, while such order is in force, have for that purpose the same powers and authorities as he has under the Acts in pursuance of which he was originally appointed inspector, and also the powers and authorities of a government inspector under this Act.

Application of 35 & 36 Vict. c. 76, and c. 77 to magazines used for mines.

59. Where a magazine or store is established for the purpose of any mine subject to the Coal Mines Regulation Act, 1872, or the Metalliferous Mines Regulation Act, 1872, by the owner (as defined by such Act) of the mine, the secretary of state may from time to time by order direct an inspector under either of those Acts to act with respect to such magazine or store as a government inspector under this Act, and may revoke any such order; and such inspector shall, while such order is in force, have for that purpose the same powers and authorities as he has under the said Acts, and also the powers and authorities of a government inspector under this Act.

License and special rules certified by government inspector to be evidence. 35 & 36 Vict. c. 76, s. 59.

60. A copy of any license confirmed by the secretary of state under this Act, and of any special rules under this Act, certified by a government inspector, shall be evidence of such license and special rules respectively, and of the fact of such license having been duly granted and confirmed and such special rules duly established under this Act.

Keeping and carriage of samples by government inspector.

61. A government inspector, and any other person authorized by him for the purpose, may keep and convey any sample taken for the purposes of this Act by or by authority of such inspector, so that the amount of it do not exceed what is reasonably necessary for the purpose of enabling such inspector to perform his duties under this Act, and be kept and carried with all due precautions to prevent accident; and such inspector or person shall not be liable to any penalty, punishment, or forfeiture under this or any other Act for keeping or conveying such sample.

Salaries of government inspectors and expenses of Act.

62. The salaries of the government inspectors, and the expenses incurred by the secretary of state or the government inspectors in carrying this Act into execution, shall be defrayed out of moneys provided by parliament.

Accidents.

Notice to be given of accidents connected with explosive.

63. Whenever there occurs any accident by explosion or by fire in or about or in connexion with any factory, magazine, or store, or any accident by explosion or by fire causing loss of life or personal injury in or about or in connexion with any registered premises, the

(*a*) 36 & 37 Vict. c. 85, ss. 23—28, and 38 & 39 Vict. c. 17, s. 42.

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occupier of such factory, magazine, store, or premises shall forthwith send or cause to be sent notice of such accident and of the loss of life or personal injury (if any) occasioned thereby to the secretary of state. A notice of any accident of which notice is sent in pursuance of this section to a government inspector need not be sent to any inspector or sub-inspector of factories or any inspector of mines.

Where in, about, or in connexion with any carriage, ship, or boat, either conveying an explosive, or on or from which an explosive is being loaded or unloaded, there occurs any accident by explosion or by fire causing loss of life or personal injury, or if the amount of explosive conveyed or being so loaded or unloaded exceeds in the case of gunpowder half a ton, and in the case of any other explosive the prescribed amount, any accident by explosion or by fire, the owner or master of such carriage, ship, or boat, and the owner of the explosive conveyed therein or being loaded or unloaded therefrom, or one of them, shall forthwith send or cause to be sent notice of such accident, and of the loss of life or personal injury, if any, occasioned thereby, to the secretary of state.

Every such occupier, owner, or master as aforesaid who fails to comply with this section shall be liable to a penalty not exceeding twenty pounds.

Reconstruction of buildings destroyed by accident.

64. Where an accident by explosion or fire has occurred in, and wholly or partly destroyed a factory magazine, or any magazine or store, the factory magazine, magazine, or store shall not be reconstructed, and any further supply of an explosive shall not be put therein, except with the permission of the secretary of state; and any explosive put therein in contravention of this section shall be deemed to be kept in an unauthorized place, and the offence may be punished accordingly:

Provided, that this enactment shall not prevent the reconstruction of a factory magazine in any lawfully existing factory upon such site in the factory, and with such precautions as may seem reasonable to the secretary of state, due regard being had to the working of the factory as well as to the safety of the public and of the persons employed therein.

Where an accident by explosion or fire in a factory has wholly or partly destroyed any building of such factory as to which a government inspector has previously to the accident sent to the occupier a notice that the building is unduly near to some building or work outside the factory, such building shall be reconstructed only upon such site in the factory and with such precautions as may seem reasonable to the secretary of state, due regard being had to the working of the factory as well as to the safety of the public and of the persons employed therein.

Where an accident by explosion or by fire in a factory has wholly or partly destroyed two or more buildings in such factory, not more than one of such buildings shall be reconstructed except with the permission of the secretary of state; provided that this enactment shall not apply to any buildings in a lawfully existing factory, if either both or all such buildings are incorporating mills, or if as regards any other buildings a government inspector has not previously to the accident sent to the occupier a notice that such buildings are unduly near to each other.

Where a building is constructed on a different site in pursuance of this section, the secretary of state shall cause the necessary alterations

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to be made in the license, and such alterations shall be deemed to be part of the license.

The reconstruction of any building in contravention of this section shall be deemed to be a breach of the terms of the license, and shall be punished accordingly.

Provisions as to coroners inquests on deaths from accidents connected with explosives.

65. With respect to coroners inquests on the bodies of persons whose death may have been caused by the explosion of any explosive or by any accident in connexion with an explosive, the following provisions shall have effect :

(1.) Where a coroner holds an inquest upon a body of any person whose death may have been caused by any accident of which notice is required by this Act to be given to the secretary of state, or by the explosion of any explosive, the coroner shall adjourn such inquest unless a government inspector, or some person on behalf of the secretary of state, is present to watch the proceedings :

(2.) The coroner, at least four days before holding the adjourned inquest, shall send to the secretary of state notice in writing of the time and place of holding the adjourned inquest :

(3.) The coroner, before the adjournment, may take evidence to identify the body, and may order the interment thereof :

(4.) If an explosion or accident has not occasioned the death of more than one person, and the coroner has sent to the secretary of state notice of the time and place of holding the inquest not less than forty-eight hours before the time of holding the same, it shall not be imperative on him to adjourn such inquest in pursuance of this section, if the majority of the jury think it unnecessary so to adjourn :

(5.) A government inspector or person employed on behalf of the secretary of state shall be at liberty at any such inquest to examine any witness, subject nevertheless to the order of the coroner on points of law :

(6.) Where evidence is given at an inquest at which no government inspector or person employed on behalf of the secretary of state is present, of any neglect as having caused or contributed to the explosion or accident, or of any defect in or about or in connexion with any factory, magazine, store, or registered premises, or any carriage, ship, or boat carrying an explosive, appearing to the coroner or jury to require a remedy, the coroner shall send to the secretary of state notice in writing of such neglect or defect.

Inquiry into accidents and formal investigation in serious cases.

66. The secretary of state may direct an inquiry to be made by a government inspector into the cause of any accident which is caused by an explosion or fire either in connexion with any explosive, or of which notice is required by this Act to be given to the secretary of state, and where it appears to the secretary of state, either before or after the commencement of any such inquiry, that a more formal investigation of the accident, and of the causes thereof, and of the circumstances attending the same, is expedient, the secretary of state may by order direct such investigation to be held, and with respect to such inquiry and investigation the following provisions shall have effect :

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(1.) The secretary of state may, by the same or any subsequent order, appoint any person or persons possessing legal or special knowledge to assist the government inspector in holding the formal investigation, or may direct the county court judge, stipendiary magistrate, metropolitan police magistrate, or other person or persons named in the same or any subsequent order, to hold the same with the assistance of a government inspector or any other assessor or assessors named in the order :

(2.) The persons holding any such formal investigation (in this section referred to as the court) shall hold the same in open court in such manner and under such conditions as they may think most effectual for ascertaining the causes and circumstances of the accident, and enabling them to make the report in this section mentioned :

(3.) The court shall have for the purpose of such investigation all the powers of a court of summary jurisdiction when acting as a court in hearing informations for offences against this Act, and all the powers of a government inspector under this Act, and in addition the following powers ; namely,

(*a.*) They may enter and inspect any place or building the entry or inspection whereof appears to them requisite for the said purpose :

(*b.*) They may by summons under their hands require the attendance of all such persons as they think fit to call before them and examine for the said purpose, and may for such purpose require answers or returns to such inquiries as they think fit to make :

(*c.*) They may require the production of all books, papers, and documents which they consider important for the said purpose :

(*d.*) They may administer an oath, and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination :

(*e.*) Persons attending as witnesses before the court shall be allowed such expenses as would be allowed to witnesses attending before a court of record ; and in case of dispute as to the amount to be allowed, the same shall be referred by the court to a master of one of the superior courts, who, on request under the hands of the members of the court, shall ascertain and certify the proper amount of such expenses :

(4.) The government inspector making an inquiry into any accident and the court holding an investigation of any accident under this section shall make a report to the secretary of state, stating the causes of the accident and all the circumstances attending the same, and any observations thereon or on the evidence or on any matters arising out of the inquiry or investigation which he or they think right to make to the secretary of state, and the secretary of state shall cause every such report to be made public in such manner as he thinks expedient :

(5.) All expenses incurred in and about an inquiry or investigation under this section shall be deemed to be part of the expenses

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of the secretary of state in carrying this Act into execution: and

(6.) Any person who without reasonable excuse (proof whereof shall lie on him) either fails, after having had the expenses (if any) to which he is entitled tendered to him, to comply with any summons or requisition of a court holding an investigation under this Act, or prevents or impedes such court in the execution of their duty, shall for every such offence incur a penalty not exceeding ten pounds, and in the case of a failure to comply with a requisition for making any return or producing any document, not exceeding ten pounds during every day that such failure continues.

Local Supervision.

Definition and Powers of Local Authority.

Definition of local authority.

67. The local authority, for the purposes of this Act, shall be—

(1.) In the city of London, except as hereafter in this section mentioned, the court of the lord mayor and aldermen of the said city; and

(2.) In the metropolis, (that is, in places for the time being within the jurisdiction of the metropolitan board of works under the Metropolis Management Act, 1855,) except the city of London, and except as hereafter in this section mentioned, the metropolitan board of works; and

(3.) In any borough in England which is not assessed to the county rate of any county by the justices of such county, except as hereafter in this section mentioned, the mayor, aldermen, and burgesses acting by the council; and

(4.) In any harbour within the jurisdiction of a harbour authority, whether situate or not within the jurisdiction of any local authority before in this section mentioned, the harbour authority, to the exclusion of any other local authority; and

(5.) In any place in which there is no local authority as before in this section defined, the justices in petty sessions assembled.

Power of certain local bodies to become a local authority.

68. The council of any borough which is assessed to the county rate of any county by the justices of such county and the commissioners of any improvement district may by order of a secretary of state made upon the application of such council or commissioners, and published in the London Gazette, be declared to be a local authority for the purposes of this Act, and thereupon shall become a local authority accordingly for such part of their borough or district as is not included in any harbour, to the exclusion of the justices in petty sessions.

Duty of local authority and power of officer.

69. It shall be the duty of every local authority to carry into effect within their jurisdiction the powers vested in them under this Act.

Any officer authorized by the local authority may, on producing, if demanded, either a copy of his authority purporting to be certified by the clerk or some member of the local authority, or some other sufficient evidence of his authority, require the occupier of any store (not being subject to the inspection under this Act of any inspector

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of mines) or any registered premises, or any small firework factory, to show him every or any place and all or any of the receptacles in which any explosive or ingredient of an explosive, or any substance the keeping of which is restricted or regulated by this Act, that is in his possession is kept, and to give him samples of such explosive, ingredient, or substance, or of any substance which the officer believes to be an explosive or such ingredient or substance.

Any occupier of a store or registered premises or a small firework factory who refuses to comply with any such requisition of an officer of the local authority, or to give him such assistance as he may require for the purpose of this section, or who wilfully obstructs the local authority, or any officer of the local authority, in the execution of this Act, shall be liable to a penalty not exceeding twenty pounds.

Expenses of local authority.

70. All expenses incurred by any local authority in carrying into effect the execution of this Act, including the salary and expenses of any officer directed by them to act under this Act, shall be paid out of the local rate. The local rate shall for the purposes of this Act mean as follows; that is to say,

In the city of London the consolidated rate;

In the metropolis (exclusive of the city of London) the consolidated rate as levied in the metropolis exclusive of the city of London, and without any demand on such city;

In a borough the borough fund or borough rate;

In a harbour any moneys, fund, or rate applicable or leviable by the harbour authority for any harbour purposes;

In any place where the justices in petty sessions are the local authority the county rate; and

In an improvement district any fund, moneys, or rate applicable or leviable by the improvement commissioners for any purposes of improvement within their district;

And the local rate or any increase of the local rate may notwithstanding any limitation in any Act be levied for the purposes of this Act.

Power of Local Authority to provide Carriages and Magazines.

Undertaking of carriage by harbour authority and canal company.

71. Every harbour authority (*a*) and canal company shall, in addition to any other powers they may have for the like purpose, have power to provide carriages, ships, and boats for the conveyance, loading, or unloading of an explosive within the jurisdiction of such authority or company, and may charge a reasonable sum fixed by a bye-law under this Act for the use of such carriage, ship, or boat.

Provision of magazines by local authority.

72. Where any local authority other than justices in petty sessions satisfy the secretary of state that the erection of a magazine by such authority, either within or without their jurisdiction, for the keeping of any explosive, would conduce to the safety of the public within their jurisdiction, and would not be injurious to any harbour or urban sanitary district out of their jurisdiction, the secretary of state may grant a license under this Act for such magazine.

Where the magazine is without the jurisdiction of the local authority erecting the same, the assent of the local authority within whose

(*a*) See definition of "harbour authority," section 108.

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jurisdiction the site is situate to such site shall be applied for in manner provided by this Act, and when the magazine is within the said jurisdiction notice of the application to the secretary of state for the license shall be given in like manner as notice of the intention to apply for the assent of the local authority to a site is required by this Act to be given.

The local authority may, for the purpose of any such license, acquire any land or right over land, or appropriate any land or right belonging to them, and acquire or build a magazine, and may maintain and manage such magazine, and may charge for the use by persons of any such magazine such reasonable sums as they may from time to time, with the approval of the secretary of state, fix.

Such sums shall be applied in aid of the local rate, and the expenses incurred for the purposes of this section may be defrayed out of the local rate, and the local authority may borrow on the security of the local rate the amount required for the purpose of acquiring any land or right over land, or acquiring or building a magazine in pursuance of this section.

Any such loan shall be made with the approval, in the case of a council, of the treasury, and in the case of improvement commissioners, of the local government board, and in the case of a harbour authority, of the board of trade.

For the purpose of such borrowing the clauses of the Commissioners Clauses Act, 1847, with respect to the mortgages to be executed by the commissioners, shall be incorporated with this Act, and in the construction of those clauses for the purpose of this Act, this Act shall be deemed to be the special Act, and the local authority which is borrowing shall be deemed to be the commissioners.

For the purpose of the purchase of any land or right over land for the purpose of this section the Lands Clauses Consolidation Act, 1845, and the Acts amending the same (except so much as relates to the purchase of land otherwise than by agreement), shall be incorporated with this section, and in construing those Acts for the purposes of this section the special Act shall be construed to mean this Act, and the promoters of the undertaking shall be construed to mean the local authority, and land shall be construed to include any right over land.

Where any offence under this Act is committed in or about any magazine erected in pursuance of this section, such offence may be prosecuted and tried and the penalty and forfeiture therefore recovered either in the county or place in which the magazine is situate, or in any adjoining county or place.

General Power of Search.

Search for explosive when in place in contravention of this Act, or offence being committed with respect to it.

73. Where any of the following officers—namely, any government inspector, or any constable or any officer of the local authority, if such constable or officer is specially authorized either (*a*) by a warrant of a justice (which warrant such justice may grant upon reasonable ground being assigned on oath), or (*b*) (where it appears to a superintendent or other officer of police of equal or superior rank, or to a government inspector, that the case is one of emergency and that the delay in obtaining a warrant would be likely to endanger life), by a written order from such superintendent, officer, or inspector,—has reasonable cause to believe that any offence has been or is being com-

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mitted with respect to an explosive in any place (whether a building or not, or a carriage, boat, or ship) or that any explosive is in any such place in contravention of this Act, or that the provisions of this Act are not duly observed in any such place, such officer may, on producing, if demanded, in the case of a government inspector a copy of his appointment, and in the case of any other officer his authority, enter at any time, and if needs be by force, and as well on Sunday as on other days, the said place, and every part thereof, and examine the same, and search for explosives therein, and take samples of any explosive and ingredient of an explosive therein, and any substance reasonably supposed to be an explosive, or such ingredient which may be found therein.

Any person who, by himself or by others, fails to admit into any place occupied by or under the control of such person any officer demanding to enter in pursuance of this section, or in any way obstructs such officer in the execution of his duty under this section, shall be liable to a penalty not exceeding fifty pounds, and shall also be liable to forfeit all explosives, and ingredients thereof, which are at the time of the offence in his possession or under his control at the said place.

Where a constable or officer of the local authority specially authorized by written authority other than a warrant of a justice of the peace, enters and searches as above provided, a special report in writing of every act done by such constable or officer in pursuance of that authority, and of the grounds on which it is done, shall be forthwith sent by the person by whom or under whose authority it was done to the secretary of state.

Seizure and detention of explosives liable to forfeiture (*a*).

74. Where any of the following officers, namely, any government inspector, or any constable, or any officer of the local authority, has reasonable cause to believe that any explosive or ingredient of an explosive or substance found by him is liable to be forfeited under this Act, he may seize and detain the same until some court of summary jurisdiction has determined whether the same is or is not so liable to be forfeited, and with respect thereto the following provisions shall have effect :—

(1.) The officer seizing may either require the occupier of the place in which it was seized (whether a building or not, or a carriage, boat, or ship) to detain the same in such place or in any place under the control of such occupier, or may remove it in such manner and to such place as will in his opinion least endanger the public safety, and there detain it, and may, where the matter appears to him to be urgent and fraught with serious public danger, and he is a government inspector, or is authorized by an order from a government inspector or a justice of the peace, or from a superintendent or other officer of police of equal or superior rank,

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(*a*) The Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 35, authorizes a superintendent or inspector of the metropolitan police at hours specified, to enter any ship and (except Her Majesty's ships) to search for and seize unlawful quantities of gunpowder.

The 17th section of the repealed Act 23 & 24 Vict. c. 139, empowered the secretary of state to authorize persons to inspect mills in which gunpowder, &c., was manufactured or kept. And section 27 required the conservators of the river Thames to appoint persons to search for gunpowder in vessels (except Her Majesty's ships) in the river Thames above Blackwall.

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cause the same to be destroyed or otherwise rendered harmless; but before destroying or rendering harmless the same he shall take and keep a sample thereof, and shall, if required, give a portion of the sample to the person owning the explosive, or having the same under his control at the time of the seizure; and any such occupier who, by himself or by others, fails to keep the same when he is required in pursuance of this section to detain it, and any such occupier or other person who, except with the authority of the officer seizing the same, or of a government inspector, or in case of emergency for the purpose of preventing explosion or fire, removes, alters, or in any way tampers or deals with the same while so detained, shall be liable to a penalty not exceeding fifty pounds, and shall also be liable to forfeit all explosives, and ingredients thereof, which are at the time of the offence in his possession or under his control at the said place:

(2.) The proceedings before a court of summary jurisdiction for determining whether the same is or is not liable to forfeiture shall be commenced as soon as practicable after the seizure; and

(3.) The receptacles containing the same may be seized, detained, and removed in like manner as the contents thereof; and

(4.) The officer seizing the same may use for the purposes of the removal and detention thereof any ship, boat, or carriage in which the same was seized, and any tug, tender, engine, tackle, beasts, and accoutrements belonging to or drawing or provided for drawing such ship, boat, or carriage, and shall pay to the owner a reasonable compensation for such use, to be determined, in case of dispute, by a court of summary jurisdiction, and to be recovered in like manner as penalties under this Act; and

(5.) The same shall, so far as practicable, be kept and conveyed in accordance with this Act, and with all due precaution to prevent accident, but the person seizing, removing, detaining, keeping, or conveying the same shall not be liable to any penalty, punishment, or forfeiture under this or any other Act, or to any damages, for keeping or conveying the same, so that he use all such due precautions as aforesaid; and

(6.) The officer seizing the same, or dealing with the same in pursuance of this section, shall not be liable to damages or otherwise in respect of such seizure or dealing, or any act incidental to or consequential thereon, unless it is proved that he made such seizure without reasonable cause, or that he caused damage to the article seized by some wilful neglect or default.

Inspection of wharf, carriage, boat, &c., with explosives in transitu.

75. Any of the following officers, namely, any government inspector under this Act, any chief officer of police, and any superior officer appointed for the purposes of this Act where the justices in petty sessions are the local authority, by the court of quarter sessions to which such justices belong, and in the case of any other local authority by the local authority itself may, for the purpose of ascertaining whether the provisions of this Act with respect to the conveyance, loading, unloading, and importation of an explosive are complied with, enter, inspect, and examine at any time, and as well on Sundays as on other days, the wharf, carriage, ship, or boat of any carrier or other person who conveys goods for hire, or of

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the occupier of any factory, magazine, or store, or of the importer of any explosive, on or in which wharf, carriage, ship, or boat, he has reasonable cause to suppose an explosive to be for the purpose of or in course of conveyance, but so as not to unnecessarily obstruct the work or business of any such carrier, person, occupier, or importer.

Any such officer, if he find any offence being committed under this Act in any such wharf, carriage, ship, or boat, or on any public wharf, may seize and detain or remove the said carriage, ship, or boat, or the explosive, in such manner and with such precautions as appear to him to be necessary to remove any danger to the public, and may seize and detain the said explosive, as if it were liable to forfeiture.

Any officer above mentioned in this section, and any officer of police, or officer of the local authority who has reasonable cause to suppose that any offence against this Act is being committed in respect of any carriage (not being on a railway) or any boat conveying, loading, or unloading any explosive, and that the case is one of emergency, and that the delay in obtaining a warrant will be likely to endanger life, may stop, and enter, inspect, and examine, such carriage or boat, and by detention or removal thereof or otherwise take such precautions as may be reasonably necessary for removing such danger, in like manner as if such explosive were liable to forfeiture.

Every officer shall for the purpose of this section have the same powers and be in the same position as if he were authorized by a search warrant granted under this Act, and any person failing to admit or obstructing such officer shall be liable to the same penalty.

Payment for samples of explosives.

76. When a government inspector, constable, or officer of the local authority in pursuance of this Act takes samples of any explosive, or ingredient, or substance, he shall pay for or tender payment for the same to such amount as he considers to be the market value thereof, and the occupier of the place in which, or the owner of the bulk from which, the sample was taken, may recover any excess of the real value over the amount so paid or tendered, and any amount so tendered, from the inspector, constable, or officer taking the sample as a debt in the county court of the district within which the sample was taken.

PART IV.

Supplemental Provisions, Legal Proceedings, Exemptions, and Definitions.

Supplemental Provisions.

Penalty on and removal of trespassers.

77. Any person who enters without permission or otherwise trespasses upon any factory, magazine, or store, or the land immediately adjoining thereto which is occupied by the occupier of such factory, magazine, or store, or on any wharf for which bye-laws are made by the occupier thereof under this Act, shall for every such offence, if not otherwise punishable, be liable to a penalty not exceeding five pounds, and may be forthwith removed from such factory, magazine,

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store, land, or wharf, by any constable, or by the occupier of such factory, magazine, store, or wharf, or any agent or servant of or other person authorized by such occupier.

Any person other than the occupier of or person employed in or about any factory, magazine, or store who is found committing any act which tends to cause explosion or fire in or about such factory, magazine, or store, shall be liable to a penalty not exceeding fifty pounds.

The occupier of any such factory, magazine, store, or wharf shall post up in some conspicuous place or places a notice or notices warning all persons of their liability to penalties under this section; but the absence of any such notice or notices shall not exempt a person from a penalty under this section.

Arrest without warrant of persons committing dangerous offences.

78. Any person who is found committing any act for which he is liable to a penalty under this Act, and which tends to cause explosion or fire in or about any factory, magazine, store, railway, canal, harbour, or wharf, or any carriage, ship, or boat, may be apprehended without a warrant by a constable, or an officer of the local authority, or by the occupier of or the agent or servant of or other person authorized by the occupier of such factory, magazine, store, or wharf, or by any agent or servant of or other person authorized by the railway or canal company or harbour authority, and be removed from the place at which he is arrested, and conveyed as soon as conveniently may be before a court of summary jurisdiction.

Imprisonment for wilful act or neglect endangering life or limb.

79. Where any person is guilty of any offence which under this Act is punishable by a pecuniary penalty only, and which, in the opinion of the court that tries the case, was reasonably calculated to endanger the safety of or to cause serious personal injury to any of the public or the persons employed in or about any factory, magazine, store, or registered premises, or any harbour, railway, canal, wharf, ship, boat, carriage, or place where such offence is committed, or to cause a dangerous accident, and was committed wilfully by the personal act, personal default, or personal negligence of the person accused, such person shall be liable, if the court is of opinion that a pecuniary penalty will not meet the circumstances of the case, to imprisonment, with or without hard labour, for a period not exceeding six months.

Penalty for throwing fireworks in thoroughfare.

80. If any person throw, cast, or fire any fireworks in or into any highway, street, thoroughfare, or public place, he shall be liable to a penalty not exceeding five pounds.

Forgery and falsification of documents.

81. Every person who forges or counterfeits any license, certificate, document, or plan granted or required in pursuance or for the purposes of this Act, or gives or signs any such document or plan which is to his knowledge false in any material particular, or wilfully makes use of any such forged, counterfeit, or false license, certificate, document, or plan, shall be liable to imprisonment, with or without hard labour, for a term not exceeding two years.

Punishment for defacing notices.

82. Every person who, without due authority, pulls down, injures, or defaces any notice, copy of rules, or document, when affixed in pursuance of this Act, or of the special rules, shall be liable to a penalty not exceeding two pounds.

Provisions as to orders

83. Her Majesty may from time to time make orders in council for

doing anything which is in this Act expressed to be authorized, directed, regulated, prescribed, or done by order in council.

in council and orders of secretary of state.

Every order in council or order of the secretary of state which purports to be made in pursuance of this Act shall be presumed to have been duly made and to be within the powers of this Act, and no objection to the legality thereof shall be entertained in any legal proceeding whatever.

Every order in council made in pursuance of this Act shall take effect as if it were enacted in this Act, and shall be published in the London Gazette, and shall be laid before both houses of parliament within one month after it is made, if parliament be then sitting, or if not, within one month after the commencement of the then next session of parliament.

Her Majesty may by order in council, and a secretary of state may by order, from time to time revoke, add to, or alter any previous orders in council or orders of the secretary of state, as the case may be, under this Act.

Publication of byelaws, notices, &c.

84. All bye-laws, notices, and documents directed by this Act to be published or advertised shall, save as otherwise provided by this Act, be published in the place which such notices and documents affect, by advertisement in some newspapers circulating generally in such place, or by placards or handbills, or in such manner as the secretary of state may from time to time direct as being in his opinion sufficient for giving information thereof to all persons interested.

Requisitions, notices, &c., to be in writing, &c., and how to be served.

85. All orders, permissions, notices, and documents issued or given by the secretary of state for the purposes of this Act, and all notices under this Act, shall be in writing or print, or partly in writing and partly in print, and all notices and documents required by this Act to be served, given, or sent by, on, or to a government inspector or secretary of state may be sent by post, by a prepaid letter, and if sent by post shall be deemed to have been served, given, and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service, giving, or sending, it shall be sufficient to prove that the letter containing the notice was properly addressed and prepaid and put into the post.

All notices and documents directed by or required for the purposes of this Act to be given or sent to the secretary of state shall, if sent to a government inspector under this Act, be deemed to have been sent to the secretary of state.

All notices and documents directed by or required for the purposes of this Act to be given or sent to a local authority may be sent, by post or otherwise, to the clerk or office of the local authority, or delivered to some person employed by them for the purposes of this Act.

Construction of enactments referring to powers of searching for gunpowder.

86. Where any enactment refers to any power of searching for gunpowder, or to any provisions of an Act of the twelfth year of King George the Third, chapter sixty-one, or of any Act repealed by this Act relative to the search for gunpowder, such enactment shall be deemed to refer to the provisions of this Act with respect to the search for and seizure, detention, and removal of an explosive by a government inspector.

Legal Proceedings.

Section 87.

Exemption of occupier from penalty upon proof of another being real offender.

87. Where any offence under this Act for which the occupier of any factory, magazine, store, or registered premises is liable to a penalty or forfeiture has in fact been committed by some other person, such other person shall be liable to a penalty not exceeding twenty pounds.

Where such occupier is charged with an offence so committed by some other person, the occupier shall be exempt from any penalty and forfeiture upon proving that he had supplied proper means and issued proper orders for the observance and used due diligence to enforce the observance of this Act, and that the offence in question was actually committed by some other person without his connivance, and if the actual offender be alive, that he has taken all practicable means in his power to prosecute such offender to conviction.

Where a government inspector, or an officer of the local authority, or the local authority, is satisfied, before instituting a proceeding for any offence under this Act against an occupier, that such occupier, if such proceeding were instituted against him, would under the foregoing provisions of this section, upon taking all practicable means in his power to prosecute the actual offender to conviction, be exempt from any penalty and forfeiture, and the occupier gives all facilities in his power for proceeding against and convicting the person whom the inspector, officer, or local authority believes actually to have committed the offence, the inspector, officer, or local authority shall proceed against that person in the first instance, without first proceeding against the occupier.

The occupier or other defendant, when charged in respect of any offence by another person, may, if he think fit, be sworn and examined as an ordinary witness in the case.

Where any offence under this Act for which any warehouseman, carrier, occupier of a wharf or dock, or owner or master of any ship, boat, or carriage, is liable to a penalty or forfeiture, has in fact been committed by some other person, this section shall apply in like manner as if the warehouseman, carrier, occupier of a wharf or dock, owner, or master were such an occupier as above in this section mentioned.

Exemption of carrier and owner and master of ship where consignee, &c., in fault.

88. Where a carrier or owner or master of a ship or boat is prevented from complying with this Act by the wilful act, neglect, or default of the consignor or consignee of the explosive, or other person, or by the improper refusal of the consignee or other person to accept delivery of the explosive, such consignor, consignee, or other person who is guilty of such wilful act, neglect, default, or refusal shall be liable to the same penalty to which the carrier, owner, or master is liable for a breach of this Act, and his conviction shall exempt the carrier, owner, or master from any penalty or forfeiture under this Act.

Supplemental provisions as to forfeiture of explosive.

89. Where a court before whom a person is convicted of an offence against this Act has power to forfeit any explosive owned by or found in the possession or under the control of such person, the court may, if it think it just and expedient, in lieu of forfeiting such explosive, impose upon such person, in addition to any other

penalty or punishment, a penalty not exceeding such sum as appears to the court to be the value of the explosive so liable to be forfeited. Section 89.

Where any explosive, or ingredient of an explosive, is alleged to be liable under this Act to be forfeited, any indictment, information, or complaint may be laid against the owner of such explosive or ingredient, for the purpose only of enforcing such forfeiture, and where the owner is unknown, or cannot be found, a court may cause a notice to be advertised, stating that unless cause is shown to the contrary at the time and place named in the notice, such explosive will be forfeited, and at such time and place the court, after hearing the owner or any person on his behalf (who may be present), may order all or any part of such explosive or ingredient to be forfeited.

90. For all the purposes of this Act— Jurisdiction in tidal waters or on boundaries.

(1.) Any harbour, tidal water, or inland water which runs between or abuts on or forms the boundary of the jurisdiction of two or more courts shall be deemed to be wholly within the jurisdiction of each of such courts : and

(2.) Any tidal water not included in the foregoing descriptions, and within the territorial jurisdiction of Her Majesty, and adjacent to or surrounding any part of the shore of the United Kingdom, and any pier, jetty, mole, or work extending into the same, shall be deemed to form part of the shore to which such water or part of the sea is adjacent, or which it surrounds.

91. Every offence under this Act may be prosecuted and every penalty under this Act may be recovered, and all explosives and ingredients liable to be forfeited under this Act may be forfeited either on indictment or before a court of summary jurisdiction, in manner directed by the Summary Jurisdiction Acts. Prosecution of offences either summarily or on indictment.

Provided that the penalty imposed by a court of summary jurisdiction shall not exceed one hundred pounds exclusive of costs, and exclusive of any forfeiture or penalty in lieu of forfeiture, and the term of imprisonment imposed by any such court shall not exceed one month.

All costs and money directed to be recovered as penalties may be recovered before a court of summary jurisdiction in manner directed by the Summary Jurisdiction Acts.

A court of summary jurisdiction may by order prohibit a person from doing any act for doing which such person has twice been convicted under this Act, and may order any person disobeying such summary order to be imprisoned for any period not exceeding six months.

92. Where a person is accused before a court of summary jurisdiction of any offence under this Act, the penalty for which offence as assigned by this Act, exclusive of forfeiture, exceeds one hundred pounds, the accused may, on appearing before the court of summary jurisdiction, declare that he objects to being tried for such offence by a court of summary jurisdiction, and thereupon the court of summary jurisdiction may deal with the case in all respects as if the accused were charged with an indictable offence and not an offence punishable on summary conviction, and the offence may be prosecuted on indictment accordingly. Power of offender in certain cases to elect to be tried on indictment, and not by summary jurisdiction.

Section 93.

Appeal to quarter sessions.

93. If any party feels aggrieved by any summary order made by a court of summary jurisdiction under this Act, or by any order or conviction made by a court of summary jurisdiction in determining any complaint or information under this Act, by which order or conviction the sum adjudged to be paid, including costs, and including the value of any forfeiture, exceeds twenty pounds, the party so aggrieved may appeal therefrom to quarter sessions, in manner provided with respect to an appeal to quarter sessions by section one hundred and ten of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-six.

24 & 25 Vict. c. 96.

Constitution of court.

94. The court of summary jurisdiction, when hearing and determining an information or complaint, in respect of any offence under this Act, shall be constituted either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorized to be done by more than one justice of the peace.

Distress of ship.

95. Where the owner or master of a ship or boat is adjudged to pay a penalty for an offence committed with or in relation to such ship or boat, the court may, in addition to any other power they may have for the purpose of compelling payment of such penalty, direct the same to be levied by distress or arrestment and sale of the said ship or boat and her tackle.

Application of penalties and disposal of forfeitures.

96. All penalties imposed in pursuance of this Act by a court of summary jurisdiction upon the prosecution of a government inspector shall, notwithstanding anything in any other Act, be paid into the receipt of Her Majesty's exchequer, in such manner as the treasury may from time to time direct, and be carried to the consolidated fund.

Any explosive or ingredient forfeited in pursuance of this Act may be sold, destroyed, or otherwise disposed of in such manner as the court declaring the forfeiture, or the secretary of state, may direct, and the proceeds of any such sale or disposal shall be paid, applied, and accounted for in like manner as penalties under this Act.

The receptacle containing any such explosive or ingredient may be forfeited, sold, destroyed, or otherwise disposed of, in like manner as the contents thereof.

The provisions of Part Three of this Act with respect to an explosive, or ingredient of an explosive, seized in pursuance of this Act, and to the officer seizing, removing, detaining, keeping, or conveying, or otherwise dealing with the same, shall apply to any explosive and ingredient declared by any court to be forfeited, and to the officer removing, detaining, keeping, conveying, selling, destroying, or otherwise disposing of the same.

The court declaring the forfeiture, or the secretary of state directing the sale or other disposal of any forfeited explosive or ingredient, and the receptacles thereof, may require the owner of such explosive or ingredient to permit the use of any ship, boat, or carriage containing such explosive or ingredient for the purpose of such sale or disposal, upon payment of a reasonable compensation for the same, to be determined in case of dispute by a court of summary jurisdiction; and where the explosive or ingredient is directed to be destroyed, the owner and the person having possession of such explo-

Section 96.

sive or ingredient, and the owner and master of the ship, boat, or carriage containing the same, or some one of them, shall destroy the same accordingly, and if the court or secretary of state so order, the ship, boat, or carriage may be detained until the same is so destroyed; and if the secretary of state is satisfied that default has been made in complying with any such direction by him or by a court, and that the detention of the ship, boat, or carriage will not secure the safety of the public, and that it is impracticable, having regard to the safety of the public or of the persons employed in such destruction, to effect the same without using such ship, boat, or carriage, or otherwise dealing with such ship, boat, or carriage, in like manner as if it were a receptacle for an explosive forfeited under this Act, the secretary of state may direct such ship, boat, and carriage, or any of them, to be, and the same may accordingly be, so used or dealt with.

Exemptions and Savings.

Exemption of government factories, &c., from the Act.

97. This Act shall not apply—

(1.) To any factory, magazine, store, premises, wharf, place, or explosive under the control of a secretary of state, the commissioners of the admiralty, or other department of the government, or otherwise held for the service of the crown, or to the manufacture, keeping, or importation of such explosive; or

(2.) To any of Her Majesty's ships, boats or carriages; or

(3.) To the keeping or making up, or adapting for use of any explosive issued by or by the authority of a secretary of state for the use of any volunteer corps or administrative regiment, or by or by the authority of the commissioners of the admiralty for the use of any force under the control of those commissioners, so far as such explosive is kept, made up, and adapted for use in accordance with the regulations of the secretary of state of the said commissioners, as the case may be; or

(4.) To any storehouse appointed for receiving any such explosive as last above mentioned in pursuance of section twenty-six of the Volunteer Act, 1863, and any Act amending the same, or otherwise, if such storehouse is approved by the secretary of state or the commissioners of the admiralty, as the case may be, as a fit place for the storing of such explosive, and is managed in accordance with the regulations of a secretary of state or such commissioners for the management of such storehouses, or for the management of the like storehouses appointed for the use of Her Majesty's army or navy; or

26 & 27 Vict. c. 65.

(5.) To the conveyance of any explosive under the control of a secretary of state, the commissioners of the admiralty, or other department of the government, or to the conveyance of any explosive otherwise held for the service of the crown when the same is being conveyed in accordance with the regulations of a secretary of state or the commissioners of the admiralty or other department of the government:

Provided that every person who enters without permission or otherwise trespasses upon any factory, magazine, or storehouse above in this section mentioned or the land immediately adjoining thereto in the occupation of the crown or of a secretary of state or the commissioners of the admiralty or other department of the government,

Section 97.

or if it adjoin such a storehouse in the occupation of the officer or person in whom such storehouse is vested, and any person found committing any act tending to cause explosion or fire in or about such factory, magazine, or storehouse, shall be liable to the like penalty, and may be removed and arrested in like manner as if this section had not been enacted and this Act applied to such factory, magazine, or storehouse, as above in this section mentioned.

Saving for rocket and fog stations.

98. This Act shall not apply—

(1.) To the keeping of any rockets for use in any apparatus for saving life, kept under the control of the commissioners of the admiralty or the board of trade ; or

(2.) To the keeping of any explosive kept for the purpose of signalling at or near a station on the sea coast, under the control of any general lighthouse authority, as defined by the Merchant Shipping Act, 1854.

17 & 18 Vict. c. 104, s. 389.

Exemption of magazines in the Mersey.

99. Nothing in this Act with respect to the keeping of gunpowder shall apply to any vessel for the storage of gunpowder moored in the river Mersey at a place appointed either before or after the passing of this Act, in pursuance of the Act of the session of the fourteenth and fifteenth years of the reign of Her present Majesty, chapter sixty-seven, intituled "An Act to repeal so much of an Act of the twelfth year of King George the Third relating to the making, keeping, and carriage of gunpowder, as exempts therefrom certain gunpowder magazines and stores near Liverpool, and to make certain temporary provisions with regard to the said magazines and stores ;" nor shall anything in this Act affect the powers of the commissioners of the admiralty, or a secretary of state, or the commissioners for the conservancy of the river Mersey under the said Act :

Provided that any explosive other than gunpowder shall not be kept in such vessel except in pursuance of a license under this Act.

Saving for master of ship and carrier in case of emergency.

100. Nothing in this Act shall render liable to any penalty or forfeiture the owner or master of any ship or boat, or any carrier or warehouseman, or the person having charge of any carriage, for any act done in breach of this Act, if he prove that by reason of stress of weather, inevitable accident, or other emergency, the doing of such Act was, under the circumstances, necessary and proper.

Saving for rockets, gunpowder, &c., on board ship in compliance with 17 & 18 Vict. c. 104.

101. Where any gunpowder, rockets, or other explosive are on board any ship in pursuance of the provisions of the Merchant Shipping Act, 1854, and the Acts amending the same, or any order or regulation made under any of those Acts, nothing in this Act shall apply to such gunpowder, rockets, or explosive, except that the conveyance and keeping thereof on board the ship or elsewhere while the ship is in harbour shall be subject to the bye-laws under this Act, and bye-laws under this Act may be made for regulating such conveyance and keeping.

Saving clause as to liability.

102. This Act shall not, save as herein expressly provided, exempt any person from any action or suit in respect of any nuisance, tort, or otherwise, which might, but for the provisions of this Act, have been brought against him.

This Act shall not exempt any person from any indictment or other proceeding for a nuisance, or for an offence which is indictable at

common law, or by any Act of parliament other than this Act, so that no person be punished twice for the same offence. Section 102.

When proceedings are taken before any court against any person in respect of any offence under this Act, which is also an offence indictable at common law or by some Act of parliament other than this Act, the court may direct that, instead of such proceedings being continued, proceedings shall be taken for indicting such person at common law or under some Act of parliament other than this Act.

A continuing certificate granted under this Act shall not make lawful any factory, magazine, or store, or any part thereof, which immediately before the passing of this Act was unlawful.

Powers of Act cumulative with power to make provisional order for repealing local Acts.

103. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any local authority by Act of parliament, but the secretary of state may, on the application of any local authority, or of any council of a borough, or any urban sanitary authority, or on the application of any persons making, keeping, importing, exporting, or selling any explosive within the jurisdiction of any local authority, council, or urban sanitary authority, after notice to such authority, make an order for repealing, altering, or amending all or any of the provisions of any Act of parliament, charter, or custom respecting the manufacture, keeping, conveyance, importation, exportation, or sale of an explosive, or the powers of such council or authority for regulating the same, or otherwise in relation to an explosive.

Notice of the draft of every such order shall be advertised not less than one month before the order is made, and the secretary of state shall consider all objections to such draft order sent to him in writing during the said month, and shall, if it seem to him necessary, direct a local inquiry into the validity of any such objections.

Any such order shall be of no force unless confirmed by parliament, but when so confirmed shall have effect, with such modifications or alterations as may be therein made by parliament.

If while a Bill confirming any such order is pending in either house of parliament, a petition is presented against such order, the Bill, so far as it relates to such order, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose the same as in the case of a Bill for a private Act.

An order under this section may also be made for revoking or altering an order under this section previously made and confirmed by parliament.

Definitions.

Extension of definition of explosive to other explosive substances.

104. Her Majesty may, by order in council, declare that any substance which appears to Her Majesty to be specially dangerous to life or property by reason either of its explosive properties, or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act, and the provisions of this Act (subject to such exceptions, limitations, and restrictions as may be specified in the order) shall accordingly extend to such substance in like manner as if it were included in the term explosive in this Act.

Persons carrying on

105. Any person who carries on any of the following processes, namely, the process of dividing into its component parts or otherwise

Section 105. breaking up or unmaking any explosive, or making fit for use any damaged explosive, or the process of remaking, altering, or repairing any explosive, shall be subject to the provisions of this Act as if he manufactured an explosive, and the expression "manufacture" shall in this Act be construed accordingly.

certain processes to be deemed manufacturers.

Definition and classification of explosives by order in council (*a*).

106. It shall be lawful for Her Majesty from time to time, by order in council, to define, for the purposes of this Act, the composition, quality, and character of any explosive, and to classify explosives.

Where the composition, quality, or character of any explosive has been defined by an order in council, any article alleged to be such explosive which differs from such definition in composition, quality, or character, whether by reason of deterioration or otherwise, shall not be deemed, for the purposes of this Act, to be the explosive so defined.

Definition of "chief officer of police."

107. In this Act—

The expression "chief officer of police" means—

(1.) In the city of London and the liberties thereof, the commissioners of city police; and

(2.) In the metropolitan police district, the commissioner or any assistant commissioner or any district superintendent of metropolitan police; and

(3.) Elsewhere the chief constable, or head constable, or other officer, by whatever name called, having the chief command of the police in the police district in reference to which such expression occurs:

"Police district."

The expression "police district" means—

(1.) The city of London and the liberties thereof; and

(2.) The metropolitan police district; and

(3.) Any county, or liberty of a county, borough, town, place, or union, or combination of places maintaining a separate police force; and all the police under one chief constable shall be deemed to constitute one force for the purposes of this section.

General definitions.

108. In this Act, unless the context otherwise requires—

The expression "this Act" includes any license, certificate, bye-law, regulation, rule, and order granted or made in pursuance of this Act:

The expression "existing" means existing at the passing of this Act:

The expression "person" includes a body corporate:

The expression "occupier" includes any number of persons and a body corporate; and in the case of any manufacture or trade, includes any person carrying on such manufacture or trade:

The expression "master" includes every person (except a pilot) having command or charge of a ship, and in reference to any boat belonging to a ship, means the master of the ship; and when used in reference to any other boat, includes every person having command or charge of such boat:

The expression "magazine" includes any ship or other vessel used for the purpose of keeping any explosive:

(*a*) See order of council in London Gazette of 10th August, 1875, directing that explosives shall be divided into seven classes.

Section 108.

The expression "factory magazine" means a building for keeping the finished explosive made in the factory, and includes, if such explosive is not gunpowder, any building for keeping the partly manufactured explosive or the ingredients of such explosive which is mentioned in that behalf in the license:

The expression "store" means an existing gunpowder store as defined by this Act, or a place for keeping an explosive licensed by a license granted by a local authority under this Act:

The expression "secretary of state" means one of Her Majesty's principal secretaries of state:

The expression "warehouseman" includes all persons owning or managing any warehouse, store, wharf, or other premises in which goods are deposited:

The expression "carrier" includes all persons carrying goods or passengers for hire by land or water:

The expression "harbour authority" means any person or body of persons, corporate or unincorporate, being or claiming to be proprietor or proprietors of or intrusted with the duty or invested with the power of improving, managing, maintaining, or regulating any harbour properly so called, whether natural or artificial, and any port, haven, and estuary, or intrusted with the duty of conserving, maintaining, or improving the navigation of any tidal water, and any such harbour, port, haven, estuary, tidal water, and any wharf, dock, pier, jetty, and work, and other area, whether land or water, over which the harbour authority as above defined have control or exercise powers, are in the other portions of this Act included in the expression "harbour":

The expression "canal company" means any person or body of persons, corporate or unincorporate, being owner or lessee or owners or lessees of, or working, or entitled to charge tolls for the use of any canal in the United Kingdom, constructed or carried on under the powers of any Act of parliament, or intrusted with the duty of conserving, maintaining, or improving the navigation of any inland water, and every such canal and inland water under the control of a canal company as above defined, and any wharf, dock, pier, jetty, and work in or at which barges do or can ship or unship goods or passengers, and other area, whether land or water, which belong to or are under the control of such canal company, are in the other portions of this Act included in the expression "canal":

The expression "tidal water" means any part of the sea or of a river within the ebb and flow of the tides at ordinary spring tides:

The expression "inland water" means any canal, river, navigation, lake, or water which is not tidal water:

The expression "railway company" means any person or body of persons, corporate or unincorporate, being the owner or lessee or owners or lessees of or working any railway worked by steam or otherwise than by animal power in the United Kingdom, constructed or carried on under the powers of any Act of parliament and used for public traffic, and every building, station, wharf, dock, and place, which belong to or are under the control of a railway company, are in the other portions of this Act included in the expression "railway":

The expression "wharf" includes any quay, landing place, siding, or other place at which goods are landed, loaded, or unloaded:

Section 108.

The expression "carriage" includes any carriage, waggon, cart, truck, vehicle, or other means of conveying goods or passengers by land, in whatever manner the same may be propelled :

The expression "ship" includes every description of vessel used in sea navigation, whether propelled by oars or otherwise :

The expression "boat" means every vessel not a ship as above defined which is used in navigation in any inland water or any harbour, whether propelled by oars or otherwise :

The expression "prescribed" means prescribed by order in council :

The expression "borough" means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and the Acts amending the same :

The expression "county" does not include a county of a city or a county of a town :

Every riding, division, liberty, or part of a county having a separate commission of the peace and separate court of quarter sessions is for the purposes of this Act to be deemed to be a county :

The expressions "urban sanitary district" and "urban sanitary authority" mean the districts and authorities declared to be urban sanitary districts and authorities by the Public Health Act, 1872 ; and any urban sanitary district which is an Improvement Act district within the meaning of that Act, is in this Act referred to as an improvement district ; and the expression "improvement commissioners" in this Act means the commissioners who are the urban sanitary authority for such district :

The expression "safety cartridges" means cartridges for small arms of which the case can be extracted from the small arm after firing, and which are so closed as to prevent any explosion in one cartridge being communicated to other cartridges :

The expression "Gunpowder Act, 1860," means the Act of the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter one hundred and thirty-nine, intituled "An Act to amend the law concerning the making, keeping, and carriage of gunpowder and compositions of an explosive nature, and concerning the manufacture, sale, and use of fireworks," and the Acts amending the same :

The expression "summary jurisdiction Acts" means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Acts amending the same :

The expression "court of summary jurisdiction" means any justice or justices of the peace, metropolitan police magistrate, stipendiary, or other magistrate or officer, by whatever name called, to whom jurisdiction is given by the summary jurisdiction Acts or any Acts therein referred to :

The expression "quarter sessions" includes general sessions.

[The sections of the Act from 109 to 115 inclusive, apply to Scotland ; and from 116 to 121 inclusive, to Ireland.]

Repeal of Acts.

Repeal of certain Acts and part of Act in 4th and 5th schedules.

122. The Acts specified in the fourth schedule to this Act are hereby repealed from and after the commencement of this Act, and the Act specified in the fifth schedule to this Act is hereby repealed from and after the commencement of this Act to the extent in the third column of that schedule mentioned.

Provided that—

(1.) The enactments hereby repealed shall continue in force—

For the purpose of any business or thing which any person is authorized to carry on or do in like manner as if this Act had not passed, for the time during which such business or thing is authorized to be carried on or done; and

(2.) Any rules made in pursuance of any enactment hereby repealed, for the purpose of regulating the conduct of servants and workmen employed in any mill, magazine, or place, shall continue in force, and the penalties under the said enactments for a breach of such rules may be enforced, until the expiration of three months after the grant of a continuing certificate under this Act to the occupier of such mill, magazine, or place, and such further period as the secretary of state may by order direct, for the purpose of enabling such occupier to make special rules under this Act; and

(3.) This repeal shall not affect—

(*a.*) The past operation of any enactment hereby repealed, nor anything duly done or suffered under any enactment hereby repealed; or

(*b.*) Any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment hereby repealed; or

(*c.*) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or

(*d.*) Any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed; and

(4.) This repeal shall not revive any enactment, right, privilege, matter, or thing not in force or existing at the commencement of this Act.

SCHEDULES.

FIRST SCHEDULE.

PART I.

Gunpowder Factories.

Regulations which are to form part of the terms of every continuing certificate of a factory for gunpowder.

(1.) The quantity of gunpowder or ingredients to be made into gunpowder to be at one time under any single pair of mill stones or rollers or runners shall not exceed fifty pounds as respects sporting and government powder, and sixty pounds as respects all inferior powders; and every incorporating mill or group of incorporating mills shall be provided with a charge house for the store of mill charges, properly constructed of stone or brick, and situate at a safe and suitable distance from each incorporating mill or group of incorporating mills:

(2.) The quantity of gunpowder to be subjected to pressure at one time in any press house shall not exceed ten hundredweight:

(3.) The quantity of gunpowder to be corned or granulated at one time in any corning or granulating house shall not exceed twelve hundredweight:

(4.) The quantity of gunpowder to be dried at one time in one stove or place used for the drying of gunpowder shall not exceed fifty hundredweight:

(5.) The respective quantities to be at any one time in any press house or corning or granulating house shall not exceed twice the respective quantities hereby allowed to be subjected to pressure and to be corned or granulated at one time; and the quantity to be at any one time in any drying house or dusting house shall not be more than is necessary for the immediate supply and work of such house; and for the purposes of this provision any building used with any such press house, corning or granulating house, drying house or dusting house, shall be deemed part thereof, save only magazines constructed with stone or brick and situate forty yards at least from every such press house or other house as aforesaid (hereinafter distinguished as expense magazines), and save only the stove in which the powder which has been dried may be cooling:

(6.) Every person keeping or using any mill for the making of gunpowder shall have (in addition to the expense magazines) a good and sufficient factory magazine or magazines, situate (unless otherwise authorized by a certificate of the secre-

tary of state under the Gunpowder Act, 1860) at least one hundred and forty yards distant from the mill or mills and every press house and other house or place used for or in the making of gunpowder, such magazine or magazines to be well and substantially built with brick or stone, and situate in such place as may have been lawfully used or duly licensed by justices before the commencement of the Gunpowder Act, 1860, and not made unlawful by that Act, or may have been after the commencement of that Act duly licensed under the Gunpowder Act, 1860 :

(7.) No maker of gunpowder shall keep or permit to be kept any charcoal within twenty yards of any mill or other engine for making gunpowder, or of any press house, or drying, corning, or dusting house or other place used in or for the making of gunpowder, or any magazine or storehouse thereto belonging.

PART II.

Gunpowder Stores.

Regulations which are to form part of the terms of every continuing certificate for a gunpowder store.

(1.) The store shall be exclusively for the use of a mine, quarry, colliery, or factory for safety fuzes :

(2.) The amount of gunpowder in the store shall not exceed, if the store is well and substantially built of brick or stone, four thousand pounds, and in any other case three hundred pounds :

(3.) Where the amount of gunpowder in the store exceeds three hundred pounds, such store shall, unless otherwise authorized before the passing of this Act by a certificate of the secretary of state, be within two hundred yards of the mine, quarry, colliery, or factory for safety fuzes, or one of the mines, quarries, collieries, or factories for safety fuzes for the use of which such gunpowder is kept, and not within two hundred yards of any inhabited house without the consent in writing of the occupier of such house :

(4.) Where such certificate has been given, the conditions on which it was given shall be duly observed as if they were contained in this schedule :

(5.) Where the amount of gunpowder does not exceed three hundred pounds, the store shall be within two hundred yards of the mine, quarry, colliery, or factory for the use of which it is erected, and unless it was erected and used for the said purpose before the passing of the Gunpowder Act, 1860, shall not be within two hundred yards from any inhabited house without the consent in writing of the occupier of such house :

(6.) The store shall not be within the city of London or Westminster or within three miles of either of them, or within any borough or market town or one mile of the same, or within two miles of any palace or house of residence of Her Majesty, her heirs and successors, or within two miles of any gunpowder magazine belonging to the crown, or within half a mile of any parish church.

Sched. 2.

SECOND SCHEDULE.

Arbitration.

Provisions as to arbitrations.

With respect to arbitrations under this Act, the following provisions shall have effect :

(1.) The parties to the arbitration are in this section deemed to be the occupier of the factory, magazine, or store on the one hand, and on the other the government inspector (on behalf of the secretary of state) :

(2.) Each of the parties to the arbitration may, within twenty-one days after the date of the reference, appoint an arbitrator :

(3.) No person shall act as arbitrator or umpire under this Act who is employed in or in the management of or is directly or indirectly interested in the manufacture, trade, factory, magazine, store, business, or premises to which the arbitration relates, or is in any manner interested directly or indirectly in the matter to which the arbitration relates :

(4.) The appointment of an arbitrator under this section shall be in writing, and notice of the appointment shall be forthwith sent to the other party to the arbitration, and shall not be revoked without the consent of such other party :

(5.) The death, removal, or other change in any of the parties to the arbitration shall not affect the proceedings under this section :

(6.) If within the said twenty-one days either of the parties fail to appoint an arbitrator, the arbitrator appointed by the other party may proceed to hear and determine the matter in difference, and in such case the award of the single arbitrator shall be final :

(7.) If before an award has been made any arbitrator appointed by either party die or become incapable to act, or for fourteen days refuse or neglect to act, the party by whom such arbitrator was appointed may appoint some other person to act in his place ; and if he fail to do so within fourteen days after notice in writing from the other party for that purpose, the remaining arbitrator may proceed to hear and determine the matters in difference, and in such case the award of such single arbitrator shall be final :

(8.) In either of the foregoing cases where an arbitrator is empowered to act singly, upon one of the parties failing to appoint, the party so failing may, before the single arbitrator has actually proceeded in the arbitration, appoint an arbitrator, who shall then act as if no failure had been made :

(9.) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been appointed for that purpose by both arbitrators under their hands, the matter in difference shall be determined by the umpire appointed as herein-after mentioned :

(10.) The arbitrators, before they enter upon the matters referred to them, shall appoint by writing under their hands an umpire to decide on points on which they may differ :

Sched. 2.

(11.) If the umpire die or become incapable to act before he has made his award, or refuses to make his award within a reasonable time after the matter has been brought within his cognizance, the persons or person who apppointed such umpire shall forthwith appoint another umpire in his place :

(12.) If the arbitrators refuse or fail or for seven days after the request of either party neglect to appoint an umpire, then on the application of either party an umpire shall be appointed by the chairman of the quarter sessions of the peace within the jurisdiction of which the factory, magazine, or store is situate :

(13.) The decision of every umpire on the matters referred to him shall be final :

(14.) If a single arbitrator fail to make his award within twenty-one days after the day on which he was appointed, the party who appointed him may appoint another arbitrator to act in his place :

The arbitrator and their umpire or any of them may examine the parties and their witnesses on oath, they may also consult any counsel, engineer, or scientific person whom they may think it expedient to consult :

(15.) The payment, if any, to be made to any arbitrator or umpire for his services shall be fixed by the secretary of state, and together with the costs of the arbitration and award shall be paid by the parties, or one of them, according as the award may direct. Such costs may be taxed by a master of one of the superior courts, who, on the written application of either of the parties, shall ascertain and certify the proper amount of such costs. The amount, if any, payable by the secretary of state shall be paid as part of the expenses of inspectors under this Act. The amount, if any, payable by any other party may in the event of nonpayment be recovered in the same manner as penalties under this Act.

THIRD SCHEDULE.

Maximum Fees for Licenses granted by the Secretary of State.

Factory license, original	Ten pounds.
Do., amending	Five pounds.
Do., renewal when lost	Five shillings.
Magazine license, original	Ten pounds.
Do., amending	Five pounds.
Do., renewal when lost	Five shillings.
Importation license, first grant	One pound.
Do., renewal	Ten shillings.
Containing certificate	Forty shillings.

Sched. 4.

FOURTH SCHEDULE.

Session and Chapter.	Title.
23 & 24 Vict. c. 139 -	An Act to amend the law concerning the making, keeping, and carriage of gunpowder and compositions of an explosive nature, and concerning the manufacture, sale, and use of fireworks.
24 & 25 Vict. c. 130 -	An Act for amending an Act passed in the last session of parliament to amend the law concerning the making, keeping, and carriage of gunpowder and compositions of an explosive nature, and concerning the manufacture, sale, and use of fireworks.
25 & 26 Vict. c. 98 - -	An Act for the amendment of an Act of the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter one hundred and thirty-nine, intituled an Act to amend the law concerning the making, keeping, and carriage of gunpowder and compositions of an explosive nature, and concerning the manufacture, sale, and use of fireworks, and of an Act amending the last-mentioned Act.
29 & 30 Vict. c. 69 - -	An Act for the amendment of the law with respect to the carriage and deposit of dangerous goods.
32 & 33 Vict. c. 113 - -	An Act to prohibit for a limited time the importation and to restrict and regulate the carriage of nitro-glycerine.

FIFTH SCHEDULE.

Session and Chapter.	Abbreviated Title.	Extent of Repeal.
26 & 27 Vict. c. 65.	The Volunteer Act, 1863.	Section twenty-six from "all exemptions contained in the Gunpowder Act, 1860," inclusive, to the end of the section.

AN ACT

TO MAKE PROVISION RESPECTING THE USE OF SUBWAYS CONSTRUCTED BY THE METROPOLITAN BOARD OF WORKS IN THE METROPOLIS.

31 & 32 VICT. CAP. 80.

25TH JUNE, 1868.

WHEREAS subways have been constructed or are proposed to be constructed in the new streets and roadways which the metropolitan board of works, in this Act called "the board," are by virtue of the several Acts set forth in the schedule to this Act authorized to make within the metropolis: And whereas, in order to prevent inconvenience to the public by the frequent breaking up of the said streets and roadways, it is expedient to enable the board to require companies or persons intending or required to place water, gas, and other pipes in the said streets and roadways to lay the same in the subways upon proper terms and conditions; and it is also expedient to make other provision respecting the use of subways in the metropolis: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as "The Metropolitan Subways Act, 1868."

Interpretation of terms.

2. In this Act the term "subway" means an arched passage or covered way under the surface of a street constructed for the reception of gas, water, and other pipes; the term "street" has the same meaning as it has in "The Metropolis Management Act, 1855," and shall include any roadway on any embankment or land reclaimed from the river Thames or connected therewith; the term "pipe" includes gas pipe, water pipe, tube for telegraph wires or other tube, and any apparatus connected with a pipe or tube; the expression "the metropolis" means the metropolis as defined by "The Metropolis Management Amendment Act, 1862."

Extent of Act.

3. This Act shall apply only to the several subways under any street constructed under the powers of the respective Acts set forth in the schedule to this Act annexed.

As to new pipes.

4. Where any company, body, or person is desirous of laying or may be required to lay any pipe under the surface of any street under

Section 4.

Power for board to require companies, &c., to use subways.

which there is a subway to which this Act applies, and the board, by notice served on such company, body, or person, requires them or him to lay the same in the subway, then notwithstanding anything in any special or general Act of parliament contained, it shall not be lawful for such company, body, or person to lay the same under the surface of the street otherwise than in the subway, or after the service of such notice to open or break up the street for that purpose.

Remedies against companies, &c., violating foregoing provisions.

5. If any company, body, or person lays a pipe or opens or breaks up a street in any respect in contravention of the foregoing provision, they or he shall for every such offence (without prejudice to any other remedy or proceeding against them or him) be liable to a penalty not exceeding twenty pounds; and the board (whether having the control or management of the surface and soil of the street or not), if they think fit, may remove the pipe so laid, and may fill in the ground and make good the surface and pavement of the street so opened or broken up, and the expenses incurred by the board in so doing shall be repaid, on demand, to the board by such company, body, or person, and in default of payment may be recovered as a penalty (*a*) is under this Act recoverable.

As to existing pipes in streets in which there is a subway.

6. Where the board has before or after the passing of this Act constructed a subway under any street to which this Act applies, and a pipe has been laid under the surface of the street otherwise than in the subway, the board may, by notice served on the company, body, or person to whom such pipe belongs, require them or him to remove the same into the subway, and the cost of such removal shall be defrayed by the board; and if any difference arise as to the reasonable amount of such cost, the same shall be settled by an arbitrator to be appointed by the board of trade on the application of either party, and the cost of the reference shall be in the discretion of the arbitrator; and if default be made by the company in the removal of any such pipe, the board, whether having the control or management of the surface and soil of the street or not, if they think fit, may take up the pipe in respect of which default is made, and may remove the same into the subway, and if it be necessary for the purpose of such removal to substitute new pipes for the existing pipes in the street, the arbitrator may apportion the cost of such substitution between the board and the company, body, or person, if he considers the company, body, or person derive any benefit from the substitution.

Right of all companies, &c., to use subways.

7. This board shall, so far as space will admit, and without favour or preference, allow pipes to be laid in a subway.

Pipes to be maintained by companies, &c.

8. All pipes placed in the subways shall be maintained by the companies, bodies, or persons to whom the same belong, under the supervision of an officer appointed by the board, and the subway shall be maintained by the board in an efficient state of ventilation and repair, and free from water and other obstruction in the way of the companies, bodies, and persons using the same.

As to supervision.

9. The supervision of the pipes and the general supervision of the subways to be provided by the board shall be in such manner and upon such terms, pecuniary and otherwise, as may be agreed upon

(*a*) See section 10, *infra*.

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between the board and the company, body, and person using the subway, and, in case of difference, the manner and terms of such supervision shall be determined by the board of trade, or by an arbitrator appointed by that board, on the application of either party, and the costs of the reference shall be in the discretion of the arbitrator, and each party shall do all Acts necessary to give effect to such arbitration.

Application to this Act of powers, &c., of Local Management Act, &c.

10. For the purposes and in the execution of this Act, the board shall have and may exercise all such powers, privileges, and authorities as are conferred on the board by the Acts constituting and regulating the board, and as far as may be the provisions of those Acts shall apply for the purposes and in the execution of this Act, and in particular the provisions of those Acts relative to bye-laws shall extend to empower the board to make, alter, and repeal bye-laws (*b*) for regulating the use of subways constructed by the board before or after the passing of this Act, and of the communications therewith; and penalties (*c*) under this Act shall be recoverable and applicable as penalties under the said Acts are recoverable and applicable.

See section 202 and following sections of the Local Management Act, 1855.

No bye-laws to come into operation until allowed by the board of trade.

11. No bye-laws made under the authority of this Act shall come into operation until the same be allowed by the board of trade, and twenty-one days' notice of the intention to apply to the board of trade for the allowance of such bye-laws shall be given to the gas and water companies supplying gas and water in the districts in which the subways to which such bye-laws relate shall be situate; and the board of trade may allow, disallow, or alter any such bye-laws as they think proper.

Expenses of Act.

12. The costs, charges, and expenses of and incidental and preliminary to the obtaining and passing of this Act, and incurred by the board in relation thereto, and of carrying the same into effect, shall be paid by the board out of the funds which they may raise within the metropolis, as defined by "The Metropolis Management Amendment Act, 1862," under the powers and provisions of "The Metropolis Management Act, 1855," and the Acts amending the same.

The SCHEDULE to which the foregoing Act refers.

Acts authorizing the making, by the metropolitan board of works, of new streets and roadways.

1. Covent Garden Approach, and Southwark and Westminster Communication Act, 1857.
2. Victoria Park Approach Act, 1858.
3. The Thames Embankment Act, 1862.
4. The Thames Embankment Act, 1863.
5. The Metropolis Improvement Act, 1863.
6. The Thames Embankment Act, 1864.
7. The Whitechapel and Holborn Improvement Act, 1865.

(*b*) See 18 & 19 Vict. c. 120, s. 202.
(*c*) See 18 & 19 Vict. c. 120, s. 227.

AN ACT

TO FACILITATE THE CONSTRUCTION AND TO REGULATE THE WORKING OF TRAMWAYS.

33 & 34 VICT. CAP. 78.

9TH AUGUST, 1870.

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :

Preliminary.

Short title.

1. This Act may be cited for all purposes as "The Tramways Act, 1870."

Limitation of Act.

2. This Act shall not extend to Ireland.

Interpretation of terms.

3. For the purposes of this Act the terms hereinafter mentioned shall have the meanings hereinafter assigned to them ; that is to say,

The terms "local authority" and "local rate" shall mean respectively the bodies of persons and rate named in the table in Part One of the schedule (A.) to this Act annexed :

The term "road" shall mean any carriageway being a public highway, and the carriageway of any bridge forming part of or leading to the same :

The term "road authority" shall mean, in the districts specified in the table in Part Two in the schedule (A.) to this Act annexed, the bodies of persons named in the same table, and elsewhere any local authority, board, town council, body corporate, commissioners, trustees, vestry, or other body or persons in whom a road as defined by this Act is vested, or who have the power to maintain or repair such road :

The term "district," in relation to a local authority or road authority, shall mean the area within the jurisdiction of such local authority or road authority :

The term "prescribed" shall mean prescribed by any rules made in pursuance of this Act :

The term "the Lands Clauses Acts" means, so far as the provisional order in which that term is used relates to England, The

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Lands Clauses Consolidation Act, 1845 ; and, so far as the same relates to Scotland, the Lands Clauses Consolidation (Scotland) Act, 1845 ; together with, in each case, the Lands Clauses Consolidation Acts Amendment Act, 1860 :

The term "two justices" shall, in addition to its ordinary signification, mean one stipendiary or police magistrate acting in any police court for the district.

PART I.

Provisional Orders authorising the Construction of Tramways.

By whom provisional orders authorising the construction of tramways may be obtained.

4. Provisional orders authorizing the construction of tramways in any district may be obtained by—

(1.) The local authority of such district ; or by—

(2.) Any person, persons, corporation, or company, with the consent of the local authority of such district ; or of the road authority of such district where such district is or forms part of a highway district formed under the provisions of "The Highway Acts :"

And any such local authority, person, persons, corporation, or company shall be deemed to be promoters of a tramway, and are in this Act referred to as "the promoters."

Application for a provisional order shall not be made by any local authority until such application shall be approved in the manner prescribed in Part III. of the schedule A. to this Act annexed (*a*).

Where in any district there is a road authority distinct from the local authority (*b*), the consent of such road authority shall also be necessary in any case where power is sought to break up any road (*c*) subject to the jurisdiction of such road authority, before any provisional order can be obtained.

The board of trade may in certain cases dispense with the consent

5. Where it is proposed to lay down a tramway in two or more districts, and any local or road authority having jurisdiction in any of such districts does not consent thereto, the board of trade (*d*) may, nevertheless, make a provisional order authorizing the construction of such tramway if they are satisfied, after inquiry (*e*), that two thirds of the length of such tramway is proposed to be laid in a district or in districts the local and road authority or the local and road

(*a*) See note to sched. A., Part III, *infra*.

(*b*) In the metropolis (exclusive of the city of London) the metropolitan board are the local authority, and vestries and district boards are the road authority ; sched. A., Parts I. and II.

(*c*) See Metropolis Management Act, 1855, sections 109 to 115 inclusive, as to breaking up or opening pavements.

(*d*) 34 & 35 Vict. c. 69 (Metropolitan Tramways Provisional Orders Suspension Act, 1871), enables the board of trade to dispense with certain provisions of this Act (1870) in respect of certain provisional orders therein referred to.

(*e*) See regulations with respect to enquiries before referee appointed by the board of trade, section 63.

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of local or road authority.

authorities of which district or districts do consent thereto; and in such case they shall make a special report stating the grounds upon which they have made such order.

Notices and deposit of documents by promoters as in schedule.

6. The promoters intending to make an application for a provisional order shall proceed as follows:—

(1.) In the months of October and November next before their application, or in one of those months, they shall publish notice of their intention to make such application by advertisement (*a*); and they shall, on or before the fifteenth day of the following month of December, serve notice of such intention, in accordance with the standing orders (if any) of both houses of parliament for the time being in force with respect to Bills for the construction of tramways:

(2.) On or before the thirtieth day of the same month of November they shall deposit the documents described in part two of the same schedule, according to the regulations therein contained:

(3.) On or before the twenty-third day of December in the same year they shall deposit the documents described in part three of the same schedule, according to the regulations therein contained:

All maps, plans, and documents required by this Act to be deposited for the purposes of any provisional order may be deposited with the persons and in the manner directed by the Act of the session of parliament held in the seventh year of the reign of His late Majesty King William the Fourth and the first year of Her present Majesty, intituled "An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either house of parliament;" and all the provisions of that Act shall apply accordingly (*b*).

Power for Board of Trade to determine on application and on objection.

7. The board of trade shall consider the application, and may, if they think fit, direct an inquiry in the district to which the same relates, or may otherwise inquire as to the propriety of proceeding upon such application, and they shall consider any objection thereto that may be lodged with them on or before such day as they from time to time appoint, and shall determine whether or not the promoters may proceed with the application.

Power for Board of Trade to make Provisional Order. Form and contents of Provisional Order.

8. Where it appears to the board of trade expedient and proper that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, the board of trade may settle and make a provisional order accordingly.

Every such provisional order shall empower the promoters therein specified to make the tramway upon the gauge and in manner therein described, and shall contain such provisions as (subject to the requirements of this Act) the board of trade, according to the nature of the

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(*a*) As to particulars to be stated in, and insertion of, advertisements, &c., see sched. B., Part I.

(*b*) The 7 Will. 4 & 1 Vict. c. 83, s. 2, provides that all persons interested shall have liberty to inspect and make extracts and copies of or from such maps; and section 3 imposes a penalty not exceeding £5 on any clerk of the peace, &c., for noncompliance with the provisions of the Act.

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application and the facts and circumstances of each case, think fit to submit to parliament for confirmation in manner provided by this Act (*c*); but so that any such provisional order shall not contain any provision for empowering the promoters or any other person to acquire lands otherwise than by agreement, or to acquire any lands, even by agreement, except to an extent therein limited, or to construct a tramway elsewhere than along or across a road (*d*), or upon land taken by agreement.

Regulations as to construction of tramways in towns.

9. Every tramway in a town which is hereafter authorized by provisional order shall be constructed and maintained as nearly as may be in the middle of the road; and no tramway shall be authorized by any provisional order to be so laid that for a distance of thirty feet or upwards a less space than nine feet and six inches shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway if one third of the owners or one third of the occupiers of the houses, shops, or warehouses abutting upon the part of the road where such less space shall intervene as aforesaid shall in the prescribed manner (*e*) and at the prescribed time express their dissent from any tramway being so laid.

Nature of traffic on tramway and tolls to be specified in Provisional Order.

10. Every such provisional order shall specify the nature of the traffic for which such tramway is to be used, and the tolls and charges which may be demanded and taken by the promoters in respect of the same, and shall contain such regulations relating to such traffic and such tolls and charges as the board of trade shall deem necessary and proper.

Costs of Order.

11. The costs of and connected with the preparation and making of each provisional order shall be paid by the promoters, and the board of trade may require the promoters to give security for such costs before they proceed with the provisional order.

Promoters to deposit £4 per cent. on estimate in prescribed bank.

12. After a provisional order is ready, and before the same is delivered by the board of trade, the promoters, unless they are a local authority, shall within the prescribed time and in the prescribed manner, and subject to the prescribed conditions as to interest, repayment, or forfeiture, pay, as a deposit, into the prescribed bank, the sum of money prescribed, which shall not be less than four pounds per centum on the amount of the estimate by the promoters of the expense of the construction of the tramway, or deposit in such bank any security of the prescribed nature the then value of which is not less than such sum of money.

Publication of Provisional Order as in schedule.

13. When a provisional order has been made as aforesaid and delivered to the promoters, the promoters shall forthwith publish the same by deposit and advertisement, according to the regulations contained in part four of the schedule (B.) to this Act.

Confirmation of Provisional Order by Act of Parliament.

14. On proof to the satisfaction of the board of trade of the completion of such publication as aforesaid, the board of trade shall, as soon as they conveniently can after the expiration of seven days from

(*c*) See section 14.
(*d*) See interpretation of the term "road," section 3 *supra*.
(*e*) That is, "prescribed by any rules made in pursuance of this Act": see interpretation, section 3. See power of board of trade to make rules for carrying Act into effect, section 64.

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the completion of such publication, procure a bill to be introduced into either house of parliament in relation to any provisional order which shall have been published as aforesaid not later than the twenty-fifth of April in any year, for an Act to confirm the provisional order, which shall be set out at length in the schedule to the bill; and until confirmation, with or without amendment, by act of parliament, a provisional order under this Act shall not have any operation (*a*).

If while any such bill is pending in either house of parliament a petition is presented against any provisional order comprised therein, the bill, so far as it relates to the order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a bill for a special Act.

The Act of parliament confirming a provisional order under this Act, shall be deemed a public general Act.

Incorporation of general Acts in Provisional Order.

15. The provisions of the Lands Clauses Act shall be incorporated with every provisional order under this Act, save where the same are expressly varied or excepted by any such provisional order, and except as to the following provisions, namely:—

(1.) With respect to the purchase and taking of lands otherwise than by agreement:

(2.) With respect to the entry upon lands by the promoters of the undertaking.

For the purposes of such incorporation a provisional order under this Act shall be deemed the special Act.

Power of Board of Trade to revoke, amend, extend, or vary Provisional Order.

16. The board of trade on the application of any promoters empowered by a provisional order may from time to time revoke, amend, extend, or vary such provisional order by a further provisional order.

Every application for such further provisional order shall be made in like manner and subject to the like conditions as the application for the former provisional order.

Every such further provisional order shall be made and confirmed in like manner in every respect as the former provisional order (*b*) and until such confirmation such further provisional order shall not have any operation.

Power to authorize joint work.

17. Subject and according to the provisions of this Act, the board of trade may, on a joint application, or on two or more separate applications, settle and make a provisional order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof; and all the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and separate parts of such tramway as last aforesaid; and the form of the provisional order may be adapted to the circumstances of the case.

Cesser of powers at expiration of prescribed time.

18. If the promoters, empowered by any provisional order under this Act to make a tramway, do not, within two years from the date of the same, or within any shorter period prescribed therein, complete the tramway and open it for public traffic; or,

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(*a*) As to validity of provisional order, see *Edinburgh Street Tramways Company* v. *Black*, L. R. 2 Sc. App. Cas. 336.

(*b*) See section 14 *supra*.

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If within one year from the date of the provisional order, or within such shorter time as is prescribed in the same, the works are not substantially commenced; or,

If the works having been commenced are suspended without a reason sufficient in the opinion of the board of trade to warrant such suspension;

the powers given by the provisional order to the promoters for constructing such tramway, executing such works, or otherwise in relation thereto, shall cease to be exercised, except as to so much of the same as is then completed, unless the time be prolonged by the special direction of the board of trade; and as to so much of the same as is then completed the board of trade may allow the said powers to continue and to be exercised if they shall think fit, but failing such permission the same shall cease to be exercised, and where such permission is withheld then so much of the said tramway as is then completed shall be deemed to be a tramway to which all the provisions of this Act relating to the discontinuance of tramways after proof of such discontinuance shall apply, and may be dealt with accordingly.

A notice purporting to be published by the board of trade in the London or Edinburgh Gazette, accordingly as the district to which it relates is situate in England or Scotland, to the effect that a tramway has not been completed and opened for public traffic, or that the works have not been substantially commenced, or that they have been suspended without sufficient reason, shall be conclusive evidence for the purposes of this section of such non-completion, non-commencement, or suspension.

Local authority may lease or take tolls.

19. When a tramway has been completed under the authority of a provisional order by any local authority, or where any local authority has under the provisions of this Act acquired possession of any tramway (*c*), such authority may, with the consent of the board of trade, and subject to the provisions of this Act, by lease, to be approved of by the board of trade, demise to any person, persons, corporation, or company the right of user by such person, persons, corporation, or company of the tramway, and of demanding and taking in respect of the same the tolls and charges authorized; or such authority may leave such tramway open to be used by the public, and may in respect of such user demand and take the tolls and charges authorized; but nothing in this Act contained shall authorize any local authority to place or run carriages upon such tramway, and to demand and take tolls and charges in respect of the use of such carriages.

Notice of the intention to make such lease shall be published by the local authority by advertisement, and a copy of such lease shall be deposited according to the regulations contained in Part I. of the schedule (C.) to this Act annexed; and unless such notice is given, and such copy deposited, such lease shall not be approved of by the board of trade.

Every such lease shall be made for a term or for terms not exceeding in the whole twenty-one years.

On the determination of any lease made under this Act, the local authority may from time to time, with the consent of the board of trade, by lease, demise such rights for such further term or terms, not exceeding in any case twenty-one years, as the said board may approve.

Every such lease shall imply a condition of re-entry if at any time

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(*c*) See provision for future purchase of tramways by local authorities section 43.

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after the making of the same the lessees discontinue the working of the tramway leased, or of any part thereof, for the space of three calendar months (such discontinuance not being occasioned by circumstances beyond the control of such lessees, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control).

The person, persons, corporation, or company to whom any such lease may be made are in this Act referred to as "lessees."

How expenses to be defrayed.

20. Where the local authority in any district are the promoters of any tramway, they shall pay all expenses incurred by them in applying for and obtaining a provisional order and carrying into effect the purposes of such provisional order out of the local rate (*a*), and any such expenses shall be deemed to be purposes for which such local rate may be made, and to which the same may be applied.

Where the local rate is limited by law to a certain amount, and is by reason of such limitation insufficient for the payment of such expenses, the board of trade may, by the provisional order, extend the limit of such local rate to such amount as they shall think fit, and prescribe for the payment of such expenses.

Such local authority may, for the purposes of such provisional order, borrow and take up at interest, on the credit of such local rate, any sums of money necessary for defraying any such expenses; and for the purpose of securing the repayment of any sums so borrowed, together with such interest as aforesaid, such local authority may mortgage to the persons by or on behalf of whom such sums are advanced such local rate; but the exercise of the above-mentioned power shall be subject to the following regulations:

(1.) The money so borrowed shall not exceed such sum as may be sanctioned by the board of trade;

(2.) The money may be borrowed for such time, not exceeding thirty years, as such local authority, with the sanction of the board of trade, shall determine; and, subject as aforesaid to the repayment within thirty years, such local authority may either pay off the moneys so borrowed by equal annual instalments, or they may in every year set apart as a sinking fund, and accumulate in the way of compound interest by investing the same in the purchase of exchequer bills or other government securities, such sum as will be sufficient to pay off the moneys so borrowed, or a part thereof, at such times as the local authority may determine.

The provisions of "The Commissioners Clauses Act, 1847," with respect to the mortgages to be executed by the Commissioners, shall apply to any mortgage executed under the foregoing provisions of this section, and for the purposes of such application the said provisions shall be incorporated with this Act.

For the purposes of such incorporation, the terms "the special Act," and "the commissioners," shall be construed to mean respectively a provisional order under this Act, and the local authority.

Such local authority shall keep separate accounts of all moneys paid by them in applying for, obtaining, and carrying into effect any such provisional order, and in the repayment of moneys borrowed, and of all moneys received by them by way of rent or tolls in respect of the tramway authorized thereby.

(*a*) In the metropolis (exclusive of the city of London), the metropolitan consolidated rate; schedule A., Part I.

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When, after payment of all charges incurred under the authority of this Act, and necessary for giving effect to such provisional order, there shall be remaining in the hands of such local authority any of the moneys received by them by way of rent or tolls in respect of the tramway authorized by such provisional order, such moneys shall be applied by them to the purposes for which the local rate may be by them applied.

Metropolitan Board may, for carrying Provisional Order into effect, create stock under Loans Act of 1869.

21. The metropolitan board of works may, in order to raise money for the purpose of carrying into effect the purposes of any provisional order obtained by them, create additional stock, not exceeding in the whole three hundred thousand pounds, under "The Metropolitan Board of Works (Loans) Act, 1869," in like manner, and with the like sanction, in and with which they may create stock in order to raise money for the purposes of the Acts mentioned in the first schedule to that Act; and all the provisions of that Act shall apply as if that money were raised and that stock were created for the purposes of the last-mentioned Acts, with the exception that the money required for the purposes of any such provisional order may be borrowed by them in addition to the sum limited by section thirty-eight of "The Metropolitan Board of Works (Loans) Act, 1869."

PART II.

Construction of Tramways.

As to incorporation of Parts II. and III. of this Act with Provisional Order and special Acts.

22. Part II. and Part III. of this Act shall apply to every tramway which is hereafter authorized by any provisional order or Act of parliament, and shall be incorporated with such provisional order or Act, and all the said provisions of this Act, save so far as they shall be expressly varied or excepted by any such provisional order or Act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, with the provisions of every other Act or part of any Act which shall be incorporated therewith, form part of the said provisional order or Act, and be construed therewith as forming one provisional order or Act, as the case may be.

"Special Act:"

23. In Part II. and Part III. of this Act, the term "special Act" shall be construed to mean any Act of parliament which shall be hereafter passed or any provisional order authorizing the construction of a tramway, and with which the said parts of this Act shall be incorporated as aforesaid:

"Promoters."

24. The term "the promoters" shall mean any person, persons, corporation, company, or local authority authorized by special Act to construct a tramway.

Mode of formation of tramways.

25. Every tramway which is hereafter authorized by special Act shall be constructed on such gauge as may be prescribed by such special Act, and if no gauge is thereby prescribed, on such gauge as will admit of the use upon such tramways of carriages constructed

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for use upon railways of a gauge of four feet eight inches and half an inch, and shall be laid and maintained in such manner that the uppermost surface of the rail shall be on a level with the surface of the road, and shall not be opened for public traffic until the same has been inspected and certified to be fit for such traffic, in the prescribed manner.

Power to break up streets, &c.

26. The promoters from time to time, for the purpose of making, forming, laying down, maintaining, and renewing any tramway duly authorized, or any part or parts thereof respectively, may open and break up any road, subject to the following regulations :

1. They shall give to the road authority notice of their intention, specifying the time at which they will begin to do so, and the portion of road proposed to be opened or broken up, such notice to be given seven days at least before the commencement of the work (*a*) :
2. They shall not open, or break up, or alter the level of any road, except under the superintendence and to the reasonable satisfaction of the road authority, unless that authority refuses or neglects to give such superintendence at the time specified in the notice, or discontinues the same during the work :
3. They shall pay all reasonable expenses to which the road authority is put on account of such superintendence (*b*) :
4. They shall not, without the consent of the road authority, open or break up at any one time a greater length than one hundred yards of any road which does not exceed a quarter of a mile in length, and in the case of any road exceeding a quarter of a mile in length the promoters shall leave an interval of at least a quarter of a mile between any two places at which they may open or break up the road, and they shall not open or break up at any such place a greater length than one hundred yards.

Where the carriageway over any bridge forms part of or is a road within the jurisdiction of a road authority, but such bridge is vested in some person or persons, corporation, or company, distinct from such road authority, any work which the promoters may be empowered to construct, and which affects or in anywise interferes with the structural works of such bridge, shall be constructed under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of such person, persons, corporation, or company, unless after notice to be given by the promoters seven days at least before the commencement of such work such superintendence is refused or withheld.

Where the carriageway in or upon which any tramway is proposed to be formed or laid down is crossed by any railway or tramway on the level, any work which the promoters may be empowered to construct, and which affects or in anywise interferes with such railway

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(*a*) See case cited in note (*b*) *infra*.

(*b*) Where a tramway company, without any previous notice, on different occasions lifted and relaid paving stones, and the surveyor of the plaintiffs, the road authority, from time to time inspected and examined the work while being done by the defendants; held, that what the defendants had done came under section 28 and not under this section, and the plaintiffs were not entitled to be paid by the defendants the expenses of the superintendence: *Vestry of St. Luke* v. *North Metropolitan Tramway Company*, L. R. 1 Q. B. D. 760.

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or tramway, or the traffic thereon, shall be constructed and maintained under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of the person, corporation, or company owning such railway or tramway, unless after notice to be given by the promoters seven days at least before the commencement of such work such superintendence is refused or withheld.

Completion of works and reinstatement of road.

27. When the promoters have opened or broken up any portion of any road, they shall be under the following further obligations; namely,

1. They shall, with all convenient speed, and in all cases within four weeks at the most (unless the road authority otherwise consents in writing) complete the work on account of which they opened or broke up the same, and (subject to the formation, maintenance, or renewal of the tramway) fill in the ground and make good the surface, and, to the satisfaction of the road authority, restore the portion of the road to as good condition as that in which it was before it was opened or broken up, and clear away all surplus paving or metalling material or rubbish occasioned thereby:
2. They shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night:
3. They shall bear or pay all reasonable expenses of the repair of the road for six months after the same is restored, as far as those expenses are increased by the opening or breaking up.

If the promoters aforesaid fail to comply in any respect with the provisions of the present section, they shall for every such offence (without prejudice to the enforcement of specific performance of the requirements of this Act or to any other remedy against them) be liable to a penalty (*c*) not exceeding twenty pounds, and to a further penalty not exceeding five pounds for each day during which any such failure continues after the first day on which such penalty is incurred.

Repair of part of road where tramway is laid (*d*).

28. The promoters shall, at their own expense, at all times maintain and keep in good condition and repair, with such materials and in such manner as the road authority shall direct, and to their satisfaction, so much of any road whereon any tramway belonging to them is laid as lies between the rails of the tramway and (where two tramways are laid by the same promoters in any road at a distance of not more than four feet from each other) the portion of the road between the tramways, and in every case so much of the road as extends eighteen inches beyond the rails of and on each side of any such tramway. If the promoters abandon their undertaking, or any part of the same, and take up any tramway or any part of any tramway belonging to them, they shall with all convenient speed, and in all cases within six weeks at the most (unless the road authority otherwise consents in writing) fill in the ground and make good the surface, and, to the satisfaction of the road authority, restore the por-

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(*c*) As to recovery of tolls, penalties and charges, see section 56.

(*d*) It was decided in the case of *Murdoch* v. *London Street Tramways Company*, reported in the "Times," May 30th, 1879, that a penalty for non-repair of a tramway could not be sued for by a private individual. See *Vestry of St. Luke* v. *The Metropolitan Tramways Company*, cited in note to section 26, *supra*.

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tion of the road upon which such tramway was laid to as good a condition as that in which it was before such tramway was laid thereon, and clear away all surplus paving or metalling material or rubbish occasioned by such work; and they shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night: Provided always, that if the promoters fail to comply with the provisions of this section, the road authority, if they think fit, may themselves at any time, after seven days notice to the promoters, open and break up the road, and do the works necessary for the repair and maintenance or restoration of the road, to the extent in this section above mentioned, and the expense incurred by the road authority in so doing shall be repaid to them by the promoters.

Road authority and promoters may contract for paving roads on which tramways are laid.

29. The road authority on the one hand and the promoters on the other hand may from time to time enter into and carry into effect, and from time to time alter, renew, or vary, contracts, agreements, or arrangements with respect to the paving and keeping in repair of the whole or any portion of the roadway of any road on which the promoters shall lay any tramway, and the proportion to be paid by either of them of the expense of such paving and keeping in repair.

Provisions as to gas and water companies.

30. For the purpose of making, forming, laying down, maintaining, repairing, or renewing any of their tramways, the promoters may from time to time, where and as far as it is necessary, or may appear expedient for the purpose of preventing frequent interruption of the traffic by repairs or works in connexion with the same, alter the position of any mains or pipes for the supply of gas or water, or any tube, wires, or apparatus for telegraphic or other purposes, subject to the provisions of this Act, and also subject to the following restrictions; (that is to say,)

1. Before laying down a tramway in a road in which any mains or pipes, tubes, wires, or apparatus may be laid, the promoters shall, whether they contemplate altering the position of any such mains or pipes, wires, or apparatus, or not, give seven days notice to the company, persons, or person to whom such mains or pipes, tubes, wires, or apparatus may belong or by whom they are controlled, of their intention to lay down or alter the tramway, and shall at the same time deliver a plan and section of the proposed work. If it should appear to any such company or person that the construction of the tramway as proposed would endanger any such main or pipe, tube, wire, or apparatus, or interfere with or impede the supply of water or gas or the telegraphic or other communication, such company or person (as the case may be) may give notice to the promoters to lower or otherwise alter the position of the said mains or pipes, tubes, wires, or apparatus in such manner as may be considered necessary, and any difference as to the necessity of any such lowering or alteration shall be settled in manner provided by this Act for the settlement of differences between the promoters and other companies or persons, and all alterations to be made under this section shall be made with as little detriment and inconvenience to the company or person to whom such mains or pipes, tubes, wires, or apparatus may belong, or by whom the same are controlled, or to the inhabitants of the district, as the circumstances will admit, and under the superintendence of such company or person or of their surveyor or engineer if they or he think fit to attend,

after receiving not less than forty-eight hours notice for that purpose, which notice the promoters are hereby required to give :

2. The promoters shall not remove or displace any of the mains or pipes, valves, syphons, plugs, tubes, wires, or apparatus, or other works belonging to or controlled by any such company or person, or do anything to impede the passage of water or gas or the telegraphic or other communication into or through such mains or pipes, without the consent of such company or person, or in any other manner than such company or person shall approve, until good and sufficient mains, pipes, valves, syphons, plugs, and other works necessary or proper for continuing the supply of water or gas or telegraphic or other communication, as sufficiently as the same was supplied by the mains or pipes, tubes, wires, or apparatus proposed to be removed or displaced, shall at the expense of the promoters have been first made and laid down in lieu thereof and ready for use, and to the satisfaction of the surveyor or engineer of such water or gas or other company, or of such person, or, in case of disagreement between such surveyor or engineer and the promoters, as an engineer appointed by the board of trade shall direct :

4. The promoters shall not lay down any such pipes contrary to the regulations of any act of parliament relating to such water or gas or other company, or relating to telegraphs :

4. The promoters shall make good all damage done by them to property belonging to or controlled by any such company or person, and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with such property, or with the private service pipes of any person supplied by any such company or person with water or gas :

5. If by any such operations as aforesaid the promoters interrupt the supply of water or gas in or through any main or main pipe they shall be liable to a penalty not exceeding twenty pounds for every day upon which such supply shall be so interrupted.

For protection of sewers, &c.

31. Where in any district any tramway or any work connected therewith interferes with any sewer, drain, watercourse, subway, defence, or work in such district, or in any way affects the sewerage or drainage of such district, the promoters shall not commence any tramway or work until they shall have given to the proper authority fourteen days previous notice in writing of their intention to commence the same, by leaving such notice at the principal office of such authority with all necessary particulars relating thereto, nor until such authority shall have signified their approval of the same, unless such authority do not signify their approval, disapproval, or other directions within fourteen days after service of the said notice and particulars as aforesaid, and the promoters shall comply with and conform to all reasonable directions and regulations of the said authority in the execution of the said works, and shall provide by new, altered, or substituted works, in such manner as such authority shall reasonably require, for the proper protection of and for preventing injury or impediment to the sewers and works hereinbefore referred to, by or by reason of the tramways, and shall save harmless the said authority against all and every the expense to be occasioned thereby ; and all such works shall be done under the direction, superintendence,

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and control of the engineer or other officer or officers of the said authority, at the reasonable costs, charges, and expenses in all respects of the promoters; and when any new, altered, or substituted work as aforesaid, or any works or defence connected therewith, shall be completed by or at the costs, charges, or expenses of the promoters, under the provisions of this Act, the same shall thereafter be as fully and completely under the direction, jurisdiction, and control of the said authority and be maintained by them as any sewers or works.

Rights of authorities and companies, &c. to open roads.

32. Nothing in this Act shall take away or abridge any power to open or break up any road along or across which any tramway is laid, or any other power vested in any local authority or road authority for any of the purposes for which such authority is respectively constituted, or in any company, body, or person for the purpose of laying down, repairing, altering, or removing any pipe for the supply of gas or water, or any tubes, wires, or apparatus for telegraphic or other purposes, but in the exercise of such power every such local authority, road authority, company, body, or person, shall be subject to the following restrictions; (that is to say,)

1. They shall cause as little detriment or inconvenience to the promoters and lessees as circumstances admit:
2. Before they commence any work whereby the traffic on the tramway will be interrupted they shall (except in cases of urgency, in which cases no notice shall be necessary) give to the promoters and lessees, if there be any, notice of their intention to commence such work, specifying the time at which they will begin to do so, such notice to be given eighteen hours at least before the commencement of the work:
3. They shall not be liable to pay to the promoters or lessees any compensation for injury done to the tramway by the execution of such work, or for loss of traffic occasioned thereby, or for the reasonable exercise of the powers so vested in them as aforesaid:
4. Whenever for the purpose of enabling them to execute such work the local authority or the road authority shall so require, the promoters or lessees shall either stop traffic on the tramway to which the notice shall refer, where it would otherwise interfere with such work, or shore up and secure the same at their own risk and cost during the execution of the work there: Provided that such work shall always be completed by the local authority or the road authority, as the case may be, with all reasonable expedition:
5. Any company, body, or person shall not execute such work so far as it immediately affects the tramway except under the superintendence of the promoters, unless they refuse or neglect to give such superintendence at the time specified in the notice for the commencement of the work or discontinue the same during the progress of the work; and they shall execute such work at their own expense, and to the reasonable satisfaction of the promoters: Provided that any additional expense imposed upon them by reason of the existence of the tramway in any road or place where any such mains, pipes, tubes, wires, or apparatus shall have been laid before the construction of such tramway shall be borne by the promoters.

Difference between promoters

33. If any difference arises between the promoters or lessees on the one hand and any local authority or road authority, or any gas or water company, or any company, body, or person to whom any sewer,

drain, tube, wires, or apparatus for telegraphic or other purposes may belong, or any other company, on the other hand, with respect to any interference or control exercised, or claimed to be exercised, by them or him, or on their or his behalf, or by the promoters or lessees by virtue of this Act, in relation to any tramway or work, or in relation to any work or proceeding of the local authority, road authority, body, company, or person, or with respect to the propriety of or the mode of execution of any work relating to any tramway, or with respect to the amount of any compensation to be made by or to the promoters or lessees, or on the question whether any work is such as ought reasonably to satisfy the local authority, road authority, body, company, or person concerned, or with respect to any other subject or thing regulated by or comprised in this Act, the matter in difference shall (unless otherwise specially provided by this Act) be settled by an engineer or other fit person nominated (*a*) as referee by the board of trade on the application of either party, and the expenses of the reference shall be borne and paid as the referee directs.

Section 33. and road authority, &c.

PART III.

General Provisions.

Carriages.

34. The promoters of tramways authorized by special Act and their lessees may use on their tramways carriages with flange wheels or wheels suitable only to run on the rail prescribed by such Act; and, subject to the provisions of such special Act and of this Act, the promoters and their lessees shall have the exclusive use of their tramways for carriages with flange wheels or other wheels suitable only to run on the prescribed rail.

All carriages used on any tramway shall be moved by the power prescribed by the special Act, and where no such power is prescribed, by animal power only.

No carriage used on any tramway which is hereafter authorized by special Act shall extend beyond the outer edge of the wheels of such carriage more than eleven inches on each side.

Power for promoters to use tramways with flange-wheeled carriages, &c.

Licenses to use Tramways.

35. If at any time after any tramway or part of any tramway shall have been for three years opened for public traffic in any district it shall be represented in writing to the board of trade by the local authority of such district or by twenty inhabitant ratepayers of such district, or by the road authority of any road in which such tramway or part of a tramway is laid, that the public are deprived of the full benefit of the tramway, the board of trade may (if they consider that, *primâ facie*, the case is one for inquiry) direct an inquiry by a referee under this Act into the truth of the representation, and if the

Licenses to use the tramway may in certain events be granted to third parties by the board of trade.

(*a*) See regulations as to enquiries before referee, section 63.

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referee report that the truth of the representation has been proved to his satisfaction, the board may from time to time grant licenses to any company or person to use such tramway in addition to the promoters or their lessees, for such traffic as is authorized by the special Act, with carriages to be approved by the board, subject to the following provisions, conditions, and restrictions; that is to say,

1. The license shall be for any period not less than one year nor more than three years from the date of the license, but shall be renewable by the board, if they upon inquiry think fit:
2. The license shall be to use the whole of such tramway for the time being opened for public traffic, or such part or parts of such tramway as the board, having reference to the cause for granting the license, shall think right:
3. The license shall direct the number of carriages which the licensee or licensees shall run upon such tramway, and the mode in which and times at which such carriages shall be run:
4. The licenses shall specify the tolls to be paid to the promoters or to their lessees by the licensee or licensees for the use of the tramways:
5. The licensee or licensees, and their officers and servants, shall permit one person duly authorized for that purpose by the promoters, or by their lessees, to ride free of charge in or upon each carriage of the licensee or licensees run upon the tramways for the whole or any part of the journey:
6. The board of trade may at any time after the granting of any license revoke, alter, or modify the same for good cause shown to them.

In default of payment of tolls licensee's carriages may be detained and sold.

36. If on demand any licensee fail to pay the tolls due in respect of any passengers carried in any carriage it shall be lawful for the promoters or their lessees, to whom the same are payable, to detain and sell such carriage, or if the same shall have been removed from the tramway or premises of such promoters or lessees, to detain and sell any other carriages on such tramway or premises belonging to such licensee, and out of the moneys arising from such sale to retain the tolls payable as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus (if any) of such moneys and such of the carriages as shall remain unsold to the person entitled thereto.

Licensees to give account of passengers carried by them.

37. Every licensee shall on demand give to an officer or servant authorized in that behalf by the promoters or their lessees entitled to be paid tolls by such licensee, an exact account in writing signed by such licensee of the number of passengers conveyed by any and every carriage used by him on the tramways.

Licensees not giving account of passengers carried liable to penalty.

38. If any such licensee fails to give such account to such officer or servant demanding the same as aforesaid, or if any such licensee with intent to avoid the payment of any tolls gives a false account, he shall for every such offence forfeit to the promoters, or to their lessees entitled to be paid tolls by such licensee, a sum not exceeding five pounds, and such penalty shall be in addition to any tolls payable in respect of the passengers carried by any such carriage.

Disputes as to

39. If any dispute arise concerning the amount of the tolls due to

Section 39.

amount of toll to be settled by justice.

the promoters or to their lessees from any licensee, or concerning the charges occasioned by any detention or sale of any carriage under the provisions herein contained, the same shall be settled in England by two justices, and in Scotland by the sheriff or two justices, and it shall be lawful for the promoters or their lessees in the meanwhile to detain the carriage, or (if the case so require) the proceeds of the sale thereof.

Owners of carriages liable for damage done by their servants.

40. Every licensee shall be answerable for any trespass or damage done by his carriages or horses, or by any of the servants or persons employed by him, to or upon the tramway, or to or upon the property of any other person, and, without prejudice to the right of action against the licensee or any other person, every such servant or other person may lawfully be convicted of such trespass or damage in England before two justices, and in Scotland before the sheriff or two justices, either by the confession of the party offending or by the oath of some credible witness; and upon such conviction every such licensee shall pay to the promoters, lessees, or persons injured, as the case may be, the damage, to be ascertained by such justices, so that the same do not exceed fifty pounds.

Discontinuance of Tramways.

Tramways to be removed in certain cases.

41. If at any time after the opening of any tramway in any district for traffic the promoters discontinue the working of such tramway, or of any part thereof, for the space of three calendar months (such discontinuance not being occasioned by circumstances beyond the control of such promoters, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control), and such discontinuance is proved to the satisfaction of the board of trade, the said board, if they think fit, may by order declare that the powers of the promoters in respect of such tramway or the part thereof so discontinued shall, from the date of such order, be at an end, and thereupon the said powers of the promoters shall cease and determine, unless the same are purchased by the local authority in manner by this Act provided. Where any such order has been made, the road authority of such district may at any time after the expirarion of two months from the date of such order, under the authority of a certificate to that effect by the board of trade, remove the tramway or part of the tramway so discontinued, and the promoters shall pay to the road authority the cost of such removal and of the making good of the road by the road authority, such cost to be certified by the clerk for the time being, or by some other authorized officer of the road authority, whose certificate shall be final and conclusive; and if the promoters fail to pay the amount so certified within one calendar month after delivery to them of such certificate or a copy thereof, the road authority may, without any previous notice to the promoters (but without prejudice to any other remedy which they may have for the recovery of the amount), sell and dispose of the materials of the tramway or part of tramway removed, either by public auction or private sale, and for such sum or sums, and to such person or persons, as the road authority may think fit, and may out of the proceeds of such sale pay and reimburse themselves the amount of the cost certified as aforesaid and of the cost of sale, and the balance (if any) of the proceeds of the sale shall be paid over by the road authority to the promoters.

Section 42.

Insolvency of Promoters.

Proceedings in case of insolvency of promoters.

42. If at any time after the opening of any tramway in any district for traffic, it appears to the local authority or the road authority of such district that the promoters of such tramway are insolvent, so that they are unable to maintain such tramway, or work the same with advantage to the public, and such road authority makes a representation to that effect to the board of trade, the board of trade may direct an inquiry by a referee into the truth of the representation, and if the referee shall find that the promoters are so insolvent as aforesaid, the board of trade may, by order, declare that the powers of the promoters shall, at the expiration of six calendar months from the making of the order, be at an end, and the powers of the promoters shall cease and determine at the expiration of the said period, unless the same are purchased by the local authority in manner by this Act provided; and thereupon such road authority may remove the tramway in like manner and subject to the same provisions as to the payment of the costs of such removal, and to the same remedy for recovery of such costs, in every respect as in cases of removal under the next preceding section.

Purchase of Tramways (a).

Future purchase of undertaking by local authority.

43. Where the promoters of a tramway in any district are not the local authority, the local authority, if, by resolution passed at a special meeting of the members constituting such local authority, they so decide, may within six calendar months after the expiration of a period of twenty-one years from the time when such promoters were empowered to construct such tramway, and within six months after the expiration of every subsequent period of seven years, or within three months after any order made by the board of trade under either of the two next preceding sections, with the approval of the board of trade, by notice in writing require such promoters to sell, and thereupon such promoters shall sell to them their undertaking, or so much of the same as is within such district, upon terms of paying the then value (exclusive of any allowance for past or future profits of the undertaking, or any compensation for compulsory sale, or other consideration whatsoever) of the tramway, and all lands, buildings, works, materials, and plant of the promoters suitable to and used by them for the purposes of their undertaking within such district, such value to be in case of difference determined by an engineer or other fit person nominated as referee by the board of trade on the application of either party, and the expenses of the reference to be borne and paid as the referee directs. And when any such sale has been made, all the rights, powers, and authorities of such promoters in respect to the undertaking sold, or where any order has been made by the board of trade under either of the next preceding sections, all the rights, powers, and authorities of such promoters previous to the making of such order in respect to the undertaking sold, shall be transferred to, vested in, and may be exercised by the authority to whom the same has been sold, in like manner as if such tramway was constructed by such authority under the powers conferred upon them by a pro-

(a) See power of purchase and sale with consent of board of trade, in next section.

visional order under this Act, and in reference to the same they shall be deemed to be the promoters. Section 43.

No such resolution shall be valid unless a month's previous notice of the meeting, and of the purpose thereof, has been given in manner in which notices of meetings of such local authority are usually given (*b*), nor unless two thirds of the members constituting such local authority are present and vote at the meeting, and a majority of those present and voting concur in the resolution; provided that if in Scotland the local authority be the road trustees, it shall not be necessary that two-thirds of such trustees shall be present at the meeting, but the resolution shall not be valid unless two-thirds of the members present vote in favour of such resolution, and unless the said resolution is confirmed in like manner at another meeting called as aforesaid and held not less than three weeks and not more than six weeks thereafter; and it shall be lawful for the chairman of any such meeting, with the consent of a majority of the members present, to adjourn the same from time to time.

The local authority in any district may pay the purchase money and all expenses incurred by them in the purchase of any undertaking under the authority of this section out of the like rate, and shall have the like powers to borrow on the security of the same as if such expenses were incurred in applying for, obtaining, and carrying into effect any provisional order obtained by them under this Act.

Where the local rate is limited by law to a certain amount, and is by reason of such limitation insufficient for the payment of such purchase money and expenses, the board of trade may by provisional order extend the limit of such local rate to such amount as they shall think fit and prescribe for the payment of such purchase money and expenses.

Every such provisional order shall be confirmed in like manner as a provisional order under the authority of Part I. of this Act, and until such confirmation such provisional order shall not have any operation.

Subject and according to the preceding provisions of this section two or more local authorities may jointly purchase any undertaking or so much of the same as is within their districts.

44. Where any tramway in any district has been opened for traffic for a period of six months the promoters may, with the consent of the board of trade, sell their undertaking to any person, persons, corporation, or company, or to the local authority of such district; and when any such sale has been made all the rights, powers, authorities, obligations, and liabilities of such promoters in respect to the undertaking sold shall be transferred to, vested in, and may be exercised by, and shall attach to the person, persons, corporation, company, or local authority to whom the same has been sold, in like manner as if such tramway was constructed by such person, persons, corporation, company, or local authority under the powers conferred upon them by special Act, and in reference to the same they shall be deemed to be the promoters. Power of sale.

Provided always, that a local authority shall not purchase any undertaking under the provisions of this section unless they shall decide to make such purchase by resolution passed at a special meet-

(*b*) As to notices of special meeting see section 52 of Metropolis Management Act, 1855.

Section 44.

ing of the members constituting such local authority, which resolution shall be made in the same manner and shall be subject to the same conditions as to validity as resolutions made in regard to the purchases by the next preceding section authorized.

Where any purchase is made by any local authority under the provisions of this section, such local authority may pay the purchase money and all expenses incurred by them in making such purchase out of the like funds, and for such purposes shall have all and the like powers and be subject to all the like conditions as if such purchase were made under the authority of the next preceding section.

Tolls.

Tolls, &c.

45. The promoters or lessees of a tramway authorized by special Act may demand and take, in respect of such tramway, tolls and charges not exceeding the sums specified in such special Act, subject and according to the regulations therein specified. A list of all the tolls and charges authorized to be taken shall be exhibited in a conspicuous place inside and outside each of the carriages used upon the tramways.

Bye-laws.

Bye-laws by local authority.

46. Subject to the provisions of the special Act authorising any tramway and this Act,

The local authority of any district in which the same is laid down may, from time to time, make regulations as to the following matters :

The rate of speed to be observed in travelling upon the tramway :

The distances at which carriages using the tramway shall be allowed to follow one after the other :

The stopping of carriages using the tramway :

The traffic on the road in which the tramway is laid.

Promoters may make certain regulations.

The promoters of any tramway and their lessees may from time to time make regulations,—

For preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to them :

For regulating the travelling in or upon any carriage belonging to them

And for better enforcing the observance of all or any of such regulations, it shall be lawful for such local authority and promoters respectively to make bye-laws for all or any of the aforesaid purposes, and from time to time repeal or alter such bye-laws, and make new bye-laws, provided that such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect.

Notice of the making of any bye-law under the provisions of this Act shall be published by the local authority or the promoters making the same by advertisement, according to the regulations contained in Part II. of the schedule (C.) to this Act annexed, and unless such notice is published in manner aforesaid such bye-law shall be disallowed by the board of trade.

No such bye-law shall have any force or effect which shall be disallowed by the board of trade within two calendar months after a true copy of such bye-law shall have been laid before the board, and

Section 46.

a true copy of every such proposed bye-law shall, not less than two calendar months before such bye-law shall come into operation, be sent to the board of trade, and shall be delivered to the promoters of such tramway if the same was made by the local authority, and to such local authority if made by the promoters.

Penalties may be imposed in bye-laws.

47. Any such bye-law may impose reasonable penalties for offences against the same, not exceeding forty shillings for each offence, with or without further penalties for continuing offences, not exceeding for any continuing offence ten shillings for every day during which the offence continues (*a*); but all bye-laws shall be so framed as to allow in every case part only of the maximum penalty being ordered to be paid.

Power to local authority to license drivers, conductors, &c.

48. The local authority shall have the like power of making and enforcing rules and regulations, and of granting licenses with respect to all carriages using the tramways, and to all drivers, conductors, and other persons having charge of or using the same, and to the standings for the same, as they are for the time being entitled to make, enforce, and grant with respect to hackney carriages, and the drivers and other persons having the charge thereof, and to the standings for the same in the streets and district of or under the control of the local authority: Provided always, that in any district in which any of the powers aforesaid in relation to hackney carriages and the matters aforesaid in connexion therewith are vested in any authority other than the local authority of such district, such authority shall have and may exercise the powers by this section conferred upon the local authority.

Offences.

Penalty for obstruction of promoters in laying out tramway.

49. If any person wilfully obstructs any person acting under the authority of any promoters in the lawful exercise of their powers in setting out or making, forming, laying down, repairing, or renewing a tramway, or defaces or destroys any mark made for the purposes of setting out the line of the tramway, or damages or destroys any property of the promoters, lessees, or licensees, he shall for every such offence be liable to a penalty not exceeding five pounds.

Penalties for wilful injury or obstruction to tramway, &c. (*a*)

50. If any person, without lawful excuse (the proof whereof shall lie on him), wilfully does any of the following things; (namely,)

Interferes with, removes, or alters any part of a tramway or of the works connected therewith;

Places or throws any stones, dirt, wood, refuse, or other material on any part of a tramway;

Does or causes to be done anything in such manner as to obstruct any carriage using a tramway, or to endanger the lives of persons therein or thereon;

Or knowingly aids or assists in the doing of any such thing;

he shall for every such offence be liable (in addition to any proceedings by way of indictment or otherwise to which he may be subject) to a penalty not exceeding five pounds.

(*a*) As to recovery of penalties, see section 56.

Section 51.

Penalty on passengers practising frauds on the promoters.

51. If any person travelling or having travelled in any carriage on any tramway avoids or attempts to avoid payment of his fare, or if any person having paid his fare for a certain distance knowingly and wilfully proceeds in any such carriage beyond such distance, and does not pay the additional fare for the additional distance, or attempts to avoid payment thereof, or if any person knowingly and wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit such carriage, every such person shall, for every such offence, be liable to a penalty not exceeding forty shillings.

Transient offenders.

52. It shall be lawful for any officer or servant of the promoters or lessees of any tramway, and all persons called by him to his assistance, to seize and detain any person discovered either in or after committing or attempting to commit any such offence as in the next preceding section is mentioned, and whose name or residence is unknown to such officer or servant, until such person can be conveniently taken before a justice, or until he be otherwise discharged by due course of law.

Penalty for bringing dangerous goods on the tramway.

53. No person shall be entitled to carry or to require to be carried on any tramway any goods which may be of a dangerous nature, and if any person send by any tramway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant with whom the same are left at the time of such sending, he shall be liable to a penalty not exceeding twenty pounds for every such offence, and it shall be lawful for such promoters or lessees to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact.

Penalty for persons using tramways with carriages with flange wheels, &c.

54. If any person (except under a lease from or by agreement with the promoters, or under license from the board of trade, as by this Act provided), uses a tramway or any part thereof with carriages having flange wheels or other wheels suitable only to run on the rail of such tramway, such person shall for every such offence be liable to a penalty not exceeding twenty pounds.

Miscellaneous.

Promoters or lessees to be responsible for all damages.

55. The promoters or lessees, as the case may be, shall be answerable for all accidents, damages, and injuries happening through their act or default, or through the act or default of any person in their employment by reason or in consequence of any of their works or carriages, and shall save harmless all road and other authorities, companies, or bodies, collectively and individually, and their officers and servants, from all damages and costs in respect of such accidents, damages, and injuries.

Recovery of tolls, penalties, &c. (*a*)

56. All tolls, penalties, and charges under this Act, or under any bye-law made in pursuance of this Act, may be recovered and enforced as follows; in England before two justices of the peace in manner directed by the Act of the session of the eleventh and twelfth years

(*a*) See case of *Murdoch* v. *London Street Tramways Company*, cited in note to section 28, *ante*.

of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of the justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Act amending the same, and in Scotland before the sheriff or two justices as penalties under the Railways Clauses Consolidation (Scotland) Act, 1845. Section 56.

Right of user only.

57. Notwithstanding anything in this Act contained the promoters of any tramway shall not acquire or be deemed to acquire any right other than that of user of any road along or across which they lay any tramway, nor shall anything contained in this Act exempt the promoters of any tramway laid along any turnpike road, or any other person using such tramway, from the payment of such tolls as may be levied in respect of the use of such road by the trustees thereof.

Arrangements between turnpike road trustees and promoters.

58. The trustees of any turnpike road and the promoters of any tramway proposed to be laid or laid along the same may, with the approval of the board of trade, enter into agreements with each other for the payment of a composition to such trustees in respect of the user of such road for such tramway and the conveyance of traffic thereon, and may with the same approval alter such agreement from time to time.

Reservation of rights of owners, &c., of mines.

59. Nothing in this Act shall limit or interfere with the rights of any owner, lessee, or occupier of any mines or minerals lying under or adjacent to any road along or across which any tramway shall be laid to work such mines and minerals, nor shall any such owner, lessee, or occupier be liable to make good or pay compensation for any damage which may be occasioned to such tramway by the working in the usual and ordinary course of their mines or minerals.

Reserving powers of street authorities to widen, &c., roads.

60. Nothing in this Act shall take away or affect any power which any road authority, or the owners, commissioners, undertakers, or lessees of any railway, tramway, or inland navigation, may have by law to widen, alter, divert, or improve any road, railway, tramway, or inland navigation.

Power for local or police authorities to regulate traffic in roads.

61. Nothing in this Act shall limit the powers of the local authority or police (*b*) in any district to regulate the passage of any traffic along or across any road along or across which any tramways are laid down, and such authority or police may exercise their authority as well on as off the tramway, and with respect as well to the traffic of the promoters or of lessees as to the traffic of other persons.

Reservation of right of public to use roads.

62. Nothing in this Act or in any bye-law made under this Act shall take away or abridge the right of the public to pass along or across every or any part of any road along or across which any tramway is laid, whether on or off the tramway, with carriages not having flange wheels or wheels suitable only to run on the rail of the tramway.

Regulating inquiries before

63. Every inquiry which by this Act the board of trade are empowered to make or direct shall be made in accordance with the following provisions :

(*b*) See 2 & 3 Vict. c. 47 (Metropolitan Police), ss. 52 and 53 as to powers of commissioner of police with respect to traffic in streets, and the Metropolitan Streets Act, 1867.

Section 63.

referee appointed by the board of trade.

1. The inquiry shall be held in public before an officer to be appointed in that behalf by the board, hereinafter called the referee, and whose appointment shall be by writing, which shall specify all the matters referred to him :
2. Ten days notice at the least shall be given by the referee to the parties upon whose representation the board of trade shall have directed the inquiry, of the time and place at which the inquiry is to be commenced :
3. The inquiry shall be commenced at the time and place so appointed, and the referee may adjourn the inquiry from time to time as may be necessary to such time and place as he may think fit :
4. The referee by summons shall, on the application of any party interested in the inquiry, require the attendance before himself, at a place and time to be mentioned in the summons, of any person to be examined as a witness before him, and every person summoned shall attend the referee, and answer all questions touching the matter to be inquired into, and any person who wilfully disobeys any such summons or refuses to answer any question put to him by such referee for the purposes of the said inquiry shall be liable to a penalty not exceeding five pounds : Provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him, and no person shall be required in any case in obedience to any such summons to travel more than ten miles from his place of abode :
5. The referee may and shall administer an oath, or an affirmation where an affirmation in lieu of an oath would be admitted in a court of justice, to any person tendered or summoned as a witness on the inquiry :
6. Any person who upon oath or affirmation wilfully gives false evidence before the referee shall be deemed guilty of perjury:
7. The referee shall make his report to the board of trade in writing, and shall deliver copies of the report upon request to all or any of the parties to the inquiry.

Rules for carrying Act into effect.

64. The board of trade may from time to time make, and, when made, may rescind, annul, or add to, rules with respect to the following matters :

1. The proceedings to be had before the board under this Act :
2. The payment of money or lodgment of securities by way of deposits, the repayment and forfeiture of the same, the investment of the same, the amount and payment of interest or dividends from time to time accruing due on such deposits :
3. The plans and sections of any works to be deposited by promoters under this Act :
4. As to any other matter or thing in respect of which it may be expedient to make rules for the purpose of carrying this Act into execution.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before parliament within three weeks after they are made, if parliament be then sitting, and if parliament be not then sitting, within three weeks after the beginning of the then next session of parliament.

SCHEDULE A.

PART I.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.
	England and Wales.	
The city of London and the liberties thereof.	The Mayor, Aldermen, and Commons of the City of London.	The consolidated sewers rate.
The metropolis (1.) - -	The Metropolitan Board of Works.	The metropolitan consolidated rate.
Boroughs (2.) - - -	The mayor, aldermen, and burgesses, acting by the council.	The borough fund or other property applicable to the purposes of a borough rate, or the borough rate.
Any place not included in the above descriptions, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any Local Act with powers of improving, cleansing, or paving any town.	The commissioners, trustees, or other persons intrusted by the Local Act with powers of improving, cleansing, or paving the town.	Any rate leviable by such commissioners, trustees, or other persons, or other funds applicable by them to the purposes of improving, cleansing, or paving the town.
Any place not included in the above descriptions, and within the jurisdiction of local board constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts.	The local board.	General district rate.
Any place or parish not within the above descriptions, and in which a rate is levied for the maintenance of the poor.	The vestry, select vestry, or other body of persons, acting by virtue of any Act of parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.	The poor rate.

Notes.

(1.) "The metropolis" shall include all parishes and places in which the Metropolitan Board of Works have power to levy a main drainage rate, except the city of London and the liberties thereof.

(2.) "Borough" shall mean any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales."

Sched. A.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.
	SCOTLAND.	
Places within the jurisdiction of any town council, and not subject to the separate jurisdiction of police commissioners or trustees.	The town council.	The prison assessment or police assessment, as the local authority shall resolve.
In places within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any general or local Act.	The police commissioners or trustees.	
In any parish or part thereof over which the jurisdiction of a town council or of police commissioners or trustees exercising the functions of police commissioners does not extend.	The road trustees having the management of any road on which a tramway is proposed to be constructed.	The tolls, duties, and assessments leviable by the road trustees.

PART II.

Districts of Road Authorities.	Description of Road Authority of Districts set opposite its Name.
Parishes within the metropolis (1.) mentioned in schedule (A.) to the Metropolis Management Act, 1855.	The vestries appointed for the purposes of the Metropolis Management Act, 1855.
Districts within the metropolis (1.) formed by the union of the parishes mentioned in schedule (B.) to the Metropolis Management Act, 1855.	The board of works for the district appointed for the purpose of the Metropolis Management Act, 1855.

Note.

(1.) The term "metropolis" has in this part the same meaning as in Part I. of the schedule.

PART III.

Approval of Application by Local Authority for a Provisional Order.

The approval of any intended application for a Provisional Order by a local authority shall be in manner following; that is to say,

A resolution approving of the intention to make such application shall be passed at a special meeting of the members constituting such local authority.

Such special meeting shall not be held unless a month's previous notice of the same, and of the purpose thereof, has been given in manner in which notices of meeting of such local authority are usually given. (*a*)

Such resolution shall not be passed unless two thirds of the members constituting such local authority are present and vote at such special meeting and a majority of those present and voting concur in the resolution; provided that if in Scotland the local authority be the road trustees, it shall not be necessary that two thirds of such trustees shall be present at the meeting, but the resolution shall not be valid unless two thirds of the members present vote in favour of such resolution, and unless the said resolution is confirmed in like manner at another meeting called as aforesaid and held not less than three weeks and not more than six weeks thereafter. Where any such resolution relating to the metropolis as the same is defined in Part I. of this schedule, or to any district in Scotland of which road trustees are the local authority, has been passed in manner aforesaid, the intended application to which such resolution relates shall be deemed to be approved.

SCHEDULE B.

Provisional Orders.

PART I.

Advertisement in October or November of intended application.

(1.) Every advertisement is to contain the following particulars:

1. The objects of the intended application.
2. A general description of the nature of the proposed works, if any.
3. The names of the townlands, parishes, townships, and extra-

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(*a*) See section 52 of Metropolis Management Act, 1855, as to notices of special meeting. That directs two clear days previous notice, whereas this provision requires a month's previous notice of the meeting.

Sched. B.

parochial places in which the proposed works, if any, will be made.

4. The times and places at which the deposit under Part II. of this schedule will be made.

5. An office, either in London or at the place to which the intended application relates, at which printed copies of the draft provisional order, when deposited, and of the provisional order, when made, will be obtainable as hereinafter provided.

(2.) The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking.

(3.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed undertaking, where the proposed works (if any) will be made; or if there be no such newspaper, then in some one and the same newspaper published in the county in which every such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

PART II.

Deposit on or before 30*th November.*

(1.) The promoters are to deposit—

1. A copy of the advertisement published by them.
2. A proper plan and section of the proposed works, if any, such plan and section to be prepared according to such regulations as may from time to time be made by the board of trade in that behalf.

(2.) The documents aforesaid are to be deposited for public inspection—

In England, in the office of the clerk of the peace for every county, riding, or division, and of the parish clerk of every parish and the office of the local authority of every district in or through which any such undertaking is proposed to be made; in Scotland, in the office of the principal sheriff clerk for every county, district, or division which will be affected by the proposed undertaking, or in which any proposed new work will be made.

(3.) The documents aforesaid are also to be deposited at the office of the board of trade.

PART III.

Deposit on or before 23*rd December.*

(1.) The promoters are to deposit at the office of the board of trade—

1. A memorial signed by the promoters, headed with a short title descriptive of the undertaking (corresponding with

that at the head of the advertisement), addressed to the board of trade, and praying for a provisional order.

2. A printed draft of the provisional order as proposed by the promoters, with any schedule referred to therein.

3. An estimate of the expense of the proposed works, if any, signed by the persons making the same.

(2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement; such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.

(3.) The memorial of the promoters (to be written on foolscap paper, bookwise, with quarter margin) is to be in the following form, with such variations as circumstances require:

[*Short title of undertaking.*]

To the board of trade,

The memorial of the promoters of [*short title of undertaking*]:

Showeth as follows;

1. Your memorialists have published, in accordance with the requirements of the Tramways Act, 1870, the following advertisement:

[*Here advertisement to be set out verbatim.*]

2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement and [*here state deposit of the several matters required by Act.*]

Your memorialists, therefore, pray that a provisional order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

A.B.
C.D.

Promoters.

PART IV.

Deposit and advertisement of Provisional Order when made.

(1.) The promoters are to deposit printed copies of the provisional order, when settled and made, for public inspection in the offices of clerks of the peace and sheriff clerks, where the documents required to be deposited by them under Part II. of this schedule were deposited.

(2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of not more than each.

(3.) They are also to publish the provisional order as an advertisement once in the local newspaper in which the original advertisement of the intended application was published, or, in case the same shall no longer be published, in some other newspaper published in the district.

Sched. C.

SCHEDULE C.

PART I.

Notice and Deposit of Lease by Local Authority.

One month before any lease is submitted to the board of trade, notice of the intention to make such lease shall be given by advertisement.

(1.) Every advertisement is to contain—

1. The term of the lease.
2. The rent reserved.
3. A general description of the covenants and conditions contained therein.
4. The place where the same is deposited for public inspection.

(2.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed lease; or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(3.) The advertisement is also, in every case, to be inserted once at least in the London or Edinburgh Gazette, accordingly as the district to which it relates is situate in England or Scotland.

Deposit.

A copy of such lease shall be deposited for public inspection during office hours at the office of the local authority or at some other convenient place within the district to which such lease relates.

PART II.

Notice of Bye-laws.

Within one month after the making of any bye-law notice of the making of the same, and a copy of such bye-law, shall be published by advertisement in manner following:

(1.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by such bye-law; or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(2.) The advertisement is also, in every case, to be inserted once at least in the London or Edinburgh Gazette, accordingly as the district to which it relates is situate in England or Scotland.

AN ACT

FOR FURTHER REGULATING THE USE OF LOCOMOTIVES ON TURNPIKE AND OTHER ROADS FOR AGRICULTURAL AND OTHER PURPOSES.

28 & 29 VICT. CAP. 83.

5TH JULY, 1865.

WHEREAS by the "Locomotives Act, 1861," certain provision was made for regulating the use of locomotives on turnpike and other roads, and it is expedient that further and fuller provision should be made for that object: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows: 24 & 25 Vict. c. 70.

1. This Act shall not come into operation till the first day of September, one thousand eight hundred and sixty-five, which day is hereinafter referred to as the commencement of the Act, and shall cease and determine on the first of September; one thousand eight hundred and sixty-seven (*a*). Commencement of Act.

2. After the commencement of this Act, and so long as the same shall continue in force, the fifth, ninth, eleventh, and fifteenth sections of the said recited Act, and all orders made in pursuance of the said fifth section, are hereby repealed. Certain sections of 24 & 25 Vict. c. 70, s repealed (*b*).

(*a*) This Act is amended by the Highways and Locomotives Amendment Act, 1878, and the recited Act, the Locomotives Act, 1861, was continued by the Temporary Laws Continuance Acts, by the last of which, the 41 & 42 Vict. c. 70, this (the 28 & 29 Vict. c. 83), was, so far as it is not repealed, continued till 31st December, 1879.

It was held under 24 & 25 Vict. c. 70, s. 3, that no shoes or bearing surface complied with the Act unless similar to the tires prescribed, viz., uniform smooth surface bands, nine inches at least wide round the whole circumference, and that these bands must be continuous (save in so far as the joints might render perfect continuity impossible); *Body* v. *Jeffery*, L. R. 3 Ex. D. 95; following *Stringer* v. *Sykes*, L. R. 2 Ex. D. 240. See judgment of *Hawkins*, J., in firstly-cited case, referring to provisions respecting the gauge of wheels, &c., in Turnpike Acts.

(*b*) The 5th section provides for the discontinuance of the use of certain

Section 3.

Rules for the manner of working locomotives on turnpike roads and highways as herein stated.

3. Every locomotive propelled by steam or any other than animal power on any turnpike road or public highway shall be worked according to the following rules and regulations; viz.:

Firstly, at least three persons shall be employed to drive or conduct such locomotive, and if more than two waggons or carriages be attached thereto, an additional person shall be employed, who shall take charge of such waggons or carriages:

Secondly (*a*), one of such persons, while any locomotive is in motion, shall precede such locomotive on foot by not less than sixty yards, and shall carry a red flag constantly displayed, and shall warn the riders and drivers of horses of the approach of such locomotives, and shall signal the driver thereof when it shall be necessary to stop, and shall assist horses, and carriages drawn by horses, passing the same (*b*):

Thirdly, the drivers of such locomotives shall give as much space as possible for the passing of other traffic:

Fourthly, the whistle of such locomotive shall not be sounded for any purpose whatever; nor shall the cylinder taps be opened within sight of any person riding, driving, leading, or in charge of a horse upon the road; nor shall the steam be allowed to attain a pressure such as to exceed the limit fixed by the safety valve, so that no steam shall blow off when the locomotive is upon the road:

Fifthly, every such locomotive shall be instantly stopped, on the person preceding the same, or any other person with a horse, or carriage drawn by a horse, putting up his hand as a signal to require such locomotive to be stopped.

Sixthly, any person in charge of any such locomotive shall provide two efficient lights to be affixed conspicuously, one at each side on the front of the same, between the hours of one hour after sunset and one hour before sunrise:

Penalty on non-compliance with rules.

In the event of a non-compliance with any of the provisions of this section, the owner of the locomotive shall, on summary conviction thereof before two justices, be liable to a penalty not exceeding ten pounds; but it shall be lawful for such owner, on proving that he has incurred such penalty by reason of the negligence or wilful default of any person in charge of or in attendance on such locomotive, to recover summarily from such person the whole or any part of the penalty he may have incurred as owner.

Limit of speed of locomotives

4. Subject and without prejudice to the regulations hereinafter authorized to be made by local authorities (*c*), it shall not be lawful to drive any such locomotive along any turnpike road or public

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locomotives on roads if they cause excessive wear and tear of the highways, or are dangerous or inconvenient to the public.

The 9th section provides for the regulation of locomotives on roads.

The 11th section regulates the speed at which locomotives are to travel on roads.

The 15th section extends the Act to Great Britain.

(*a*) This section is, so far as relates to England, repealed by the Highways and Locomotives Amendment Act, 1878. See substituted provision, *post*.

(*b*) This section is not the less complied with because such person, whilst preceding the locomotive on foot, leads a horse and cart of his own: *Davis* v. *Browne*, 48 L. J. M. C. 92.

(*c*) See definition of local authorities, and as to their power to make orders as to the hours at which locomotives are to pass through places subject to their jurisdiction, and other things, in section 8.

highway at a greater speed than four miles an hour, or through any city, town, or village at a greater speed than two miles an hour; and any person acting contrary thereto shall for every such offence, on summary conviction thereof, forfeit any sum not exceeding ten pounds.

Section 4. on turnpike roads and highways.

5. (*d*) Subject to the provisions of this Act, any locomotive which shall not exceed nine feet in width or fourteen tons in weight may be used on any turnpike road or public highway, provided that the wheels of such locomotive be constructed according to the requirements of the said recited Act; and no locomotive exceeding nine feet in width or fourteen tons in weight shall be used on any such road, except subject to the provisions contained in the third section of the said Act as to the use of locomotives exceeding seven feet in width and twelve tons in weight.

Size and weight of locomotives which may be used.

6. Any provision in any Act (*e*) contained prohibiting, under penalty, the erection and use of any steam engine, gin, or other like machine, or any machinery attached thereto, within the distance of twenty-five yards from any part of any turnpike road, highway, carriageway, or cartway, unless such steam engine, gin, or other like engine or machinery be within some house or other building, or behind some wall, fence, or screen sufficient to conceal or screen the same from such turnpike road, highway, carriageway or cartway, shall not extend to prohibit the use of any locomotive steam engine for the purpose of ploughing within such distance of any such turnpike road, highway, carriageway, or cartway, provided a person shall be stationed in the road, and employed to signal the driver when it shall be necessary to stop, and to assist horses, and carriages drawn by horses, passing the same, and provided the driver of the engine do stop in proper time.

Restrictions as to the use of steam engines within twenty-five yards of roads not to apply to locomotives used for ploughing purposes.

7. The name and residence of the owner of every locomotive shall be affixed thereto in a conspicuous manner. If it is not so affixed the owner shall, on summary conviction, be liable to a penalty not exceeding two pounds.

Name and residence of owner to be affixed to locomotives.

8. (*f*) The following local authorities; (that is to say,)

1. In the city of London and liberties thereof, the court of the Lord Mayor and aldermen;
2. In the metropolis, as defined by the Act of the session of the eighteenth and nineteenth years of Her present Majesty, chapter

Power to local authorities to make orders as to hours,

(*d*) This section and section 3 of Locomotives Act, 1861, are, so far as relates to England repealed, and other provisions as to the construction of locomotives are substituted. See the section, *post*.

(*e*) Under the General Highway Act, 5 & 6 Will. 4, c. 50, prohibiting under penalty the erection of any steam engine, &c., within twenty-five yards from any part of any carriageway or cartway, except with certain precautions, it was held that a portable steam threshing machine on wheels not removed while at work, and employed within the prohibited distance, was a nuisance: *Smith* v. *Stokes*, 32 L. J. M. C. 199. But to charge the owner, he must have been present when, or known that it was employed: *Harrison* v. *Leaper*, 26 J. P. 373.

(*f*) This section is repealed by the Highways and Locomotive Amendment Act, 1878, s. 31. See substituted provision, *post*. The same Act by section 30 repeals section 8 of the Locomotive Act, 1871, so far as relates to England, and enacts in lieu thereof, that steam locomotives shall be so constructed as to consume their own smoke.

Section 8.

&c., locomotives may pass through cities, &c.

one hundred and twenty (except the city of London), the metropolitan board of works;

3. In any borough in England the population of which shall have exceeded five thousand at the last census, the council of the borough;

4. In any borough or town in England the population of which shall have exceeded five thousand at the last census, not within the jurisdiction of a council, but within the jurisdiction of any trustees or improvement commissioners appointed under any public or private Act of parliament, the trustees or commissioners;

5. In any borough or town in Scotland the population of which shall have exceeded ten thousand at the last census, within the jurisdiction of a town council, the town council, and in any such town in Scotland not within the jurisdiction of a town council, but subject to the jurisdiction of police commissioners, or of trustees exercising under any public or private Act of parliament the functions of police commissioners, the police commissioners, or, where there are no police commissioners, then the trustees,—

Penalty on acting contrary to such orders.

may make orders as to the hours during which (and as to the speed, not in any case to exceed two miles an hour, at which,) locomotives are to pass through the city or place subject to their respective jurisdictions; and any person in charge of a locomotive acting contrary to such regulations shall, on summary conviction, be liable to a penalty not exceeding ten pounds.

Every order made in pursuance of this section shall be reduced into writing, and shall have affixed thereto the common seal of the local authority, where they have a common seal, and shall be signed by the members of the local authority, or any two of them, where they have not a common seal:

A copy of such order shall be affixed to some public place within the jurisdiction of the local authority, and advertised in some newspaper circulating within the jurisdiction of the local authority, and the production of a newspaper containing such advertisement shall be evidence of the copy having been advertised in pursuance of this Act.

In Ireland the county surveyor to be deemed the conservator of the roads in his county, and proceedings for damage to be taken in his name.

9. For the purposes of this Act, the county surveyor of each county in *Ireland* shall be deemed to be the conservator of all the roads in the county of which he is surveyor, made or repaired by grand jury presentment; and it shall not be lawful to use any locomotive, other than those specially authorized by this Act, on any such road in any county in *Ireland*, without the consent in writing of the county surveyor thereof, approved of by one or more justices sitting at petty sessions; and all compensation for damage done by any locomotive to any bridge, gullet, or arch, or any of the walls, buttresses, or supports thereof, on any such road in any county in *Ireland*, shall be recoverable in the name of the county surveyor thereof, for and on behalf of the county, from the party liable to pay the same, such compensation, if not exceeding ten pounds, to be recovered in a summary way by summons at petty sessions, and if over ten pounds to be recovered by process in the civil bill court.

How penalties to be recovered

10. Every penalty imposed by the provisions of this Act shall, in *Ireland*, be recoverable before a justice or justices of the peace in petty sessions, subject and according to the provisions of "The Petty Sessions

(*Ireland*) Act, 1851," and any Act amending the same, and shall be applied according to the provisions of "The Fines (*Ireland*) Act, 1851," and any Act amending the same. Section 10. and applied in Ireland.

11. Nothing in this Act contained shall repeal, alter, or in any way affect the provisions of the forty-first section of "The Thames Embankment Act, 1862 (*a*)." Section 41 of 25 & 26 Vict. c. 93, not to be affected.

12. Nothing in this Act contained shall authorize any person to use a locomotive which may be so constructed or used as to be a public nuisance at common law, and nothing herein contained shall affect the right of any person to recover damages in respect of any injury he may have sustained in consequence of the use of a locomotive (*b*). Saving as to actions at law.

13. This Act may be cited as "The Locomotives Act, 1865;" and "The Locomotives Act, 1861," and this Act, shall be construed together as one Act. Short title.

(*a*) Which enacts that "it shall not be lawful for any person to use a locomotive engine propelled by steam along the streets or roadways constructed under the provisions of the Act."

(*b*) It was held under section 7 of 24 & 25 Vict. c. 70, relative to the repair of bridges damaged by any locomotive, by and at the expense of the owner of or person having charge of such locomotive, that it did not apply to a county bridge: *Reg.* v. *Kitchener*, L. R. 2 C. C. 88: see as to liabilities for damage by a locomotive steam engine of a company not having statutory powers to use locomotives, though negligence was negatived, *Jones* v. *Festiniog Railway Company*, L. R. 3 Q. B. 733.

AN ACT

TO AMEND THE LAW RELATING TO HIGHWAYS IN ENGLAND AND THE ACTS RELATING TO LOCOMOTIVES ON ROADS; AND FOR OTHER PURPOSES.

41 & 42 VICT. CAP. 77.

16TH AUGUST, 1878.

24 & 25 Vict. c. 70. 28 & 29 Vict. c. 83.

WHEREAS it is expedient to amend the law relating to highways in England, and to amend the Locomotives Acts, 1861 and 1865:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

PART II (*a*).

AMENDMENT OF LOCOMOTIVE ACTS, 1861 AND 1865.

Weight of locomotives and construction of wheels. 24 & 25 Vict. c. 70. 28 & 29 Vict. c. 83.

28. Section three of the Locomotive Act, 1861, and section five of the Locomotive Act, 1865, are hereby repealed, so far as relates to England, and in lieu thereof be it enacted that it shall not be lawful to use on any turnpike road or highway a locomotive constructed otherwise than in accordance with the following provisions; (that is to say,)

(1.) A locomotive not drawing any carriage, and not exceeding in weight three tons, shall have the tires of the wheels thereof not less than three inches in width, with an additional inch for every ton or fraction of a ton above the first three tons; and

(2.) A locomotive drawing any waggon or carriage shall have the tires of the driving wheels thereof not less than two inches in width for every ton in weight of the locomotive, unless the diameter of such wheels shall exceed five feet, when the

(*a*) Part I. applies to highways, &c., not in the metropolis.

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width of the tires may be reduced in the same proportion as the diameter of the wheels is increased, but in such case the width of such tires shall not be less than fourteen inches; and

(3.) A locomotive shall not exceed nine feet in width or fourteen tons in weight, except as hereinafter provided; and

(4.) The driving wheels of a locomotive shall be cylindrical and smooth-soled, or shod with diagonal cross-bars of not less than three inches in width nor more than three quarters of an inch in thickness, extending the full breadth of the tire, and the space intervening between each such cross-bar shall not exceed three inches.

The owner of any locomotive used contrary to the foregoing provisions shall for every such offence be liable to a fine not exceeding five pounds: Provided that the mayor, aldermen, and commons in the city of London, and the metropolitan board of works in the metropolis, exclusive of the city of London, and the council of any borough which has a separate court of quarter sessions, and the county authority of any county, may, on the application of the owner of any locomotive exceeding nine feet in width or fourteen tons in weight, authorize such locomotive to be used on any turnpike road or highway within the areas respectively above mentioned, or part of any such road or highway, under such conditions (if any) as to them may appear desirable. Provided also, that the owner of a locomotive used contrary to the provisions of sub-section two of this section shall not be deemed guilty of an offence under this section if he proves to the satisfaction of the court having cognizance of the case that such locomotive was constructed before the passing of this Act, and that the tires of the wheels thereof are not less than nine inches in width.

Amendment of 28 & 29 Vict. c. 83, s. 3.

29. The paragraph numbered "secondly" of section three of the Locomotive Act, 1865, is hereby repealed, so far as relates to England, and in lieu thereof the following paragraph is hereby substituted; namely,

"Secondly, one of such persons, while the locomotive is in motion, shall precede by at least twenty yards the locomotive on foot, and shall in case of need assist horses, and carriages drawn by horses, passing the same."

Steam locomotives to be constructed so as to consume their smoke. 24 & 25 Vict. c. 70.

30. Section eight of the Locomotive Act, 1861, is hereby repealed, so far as relates to England; and in lieu thereof, be it enacted that every locomotive used on any turnpike road or highway shall be constructed on the principle of consuming its own smoke; and any person using any locomotive not so constructed, or not consuming, so far as practicable, its own smoke, shall be liable to a fine not exceeding five pounds for every day during which such locomotive is used on any such turnpike road or highway.

Power to local authorities to make orders as to hours during which locomotives may pass over roads.

31. Section eight of the Locomotive Act, 1865, is hereby repealed, so far as relates to England; and in lieu thereof, be it enacted that the mayor, aldermen, and commons in the city of London, and the metropolitan board of works in the metropolis, exclusive of the city of London, and the council of any borough which has a separate court of quarter sessions, and the county authority of any county may make bye-laws as to the hours during which locomotives are not to pass over the turnpike roads or highways situate within the areas respec-

Section 6. 28 & 29 Vict. c. 83.

tively above-mentioned, the hours being in all cases consecutive hours and no more than eight out of the twenty-four, and for regulating the use of locomotives upon any highway, or preventing such use upon every bridge where such authority is satisfied that such use would be attended with danger to the public; and any person in charge of a locomotive acting contrary to such bye-laws shall be liable to a fine not exceeding five pounds.

Power of county authority to license locomotives.

32. A county authority may from time to time make, alter, and repeal bye-laws for granting annual licenses to locomotives used within their county, and the fee (not exceeding ten pounds) to be paid in respect of each license; and the owner of any locomotive for which a license is required under any bye-law so made who uses or permits the same to be used in contravention of any such bye-law shall be liable to a fine not exceeding forty shillings for every day on which the same is so used.

All fees received under this section shall be carried to and applied as part of the county rate.

This section shall not apply to any locomotive used solely for agricultural purposes.

Duration of part II. of Act. 28 & 29 Vict. c. 83.

33. This part of this Act shall remain in force so long only as the Locomotive Act, 1865, continues in force.

PART III.

Procedure and Definitions.

Confirmation of provisional order.

34. It shall be lawful for the local government board to submit any provisional order made by them under this Act to parliament for confirmation, and without such confirmation a provisional order shall not be of any validity.

Confirmation of bye-laws.

35. A bye-law made under this Act, and any alteration made therein and any repeal of a bye-law, shall not be of any validity until it has been submitted to and confirmed by the local government board.

A bye-law made under this Act shall not, nor shall any alteration therein or addition thereto or repeal thereof, be confirmed until the expiration of one month after notice of the intention to apply for confirmation of the same has been given by the authority making the same in one or more local newspapers circulating in their county or district.

Recovery of penalties and expenses.

36. All offences, fines, and expenses under this Act, or any bye-law made in pursuance of this Act, may be prosecuted, enforced, and recovered before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

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The expression "the Summary Jurisdiction Acts" means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," inclusive of any Acts amending the same.

The expression "court of summary jurisdiction" means and includes any justice or justices of the peace, metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts: Provided that the court, when hearing and determining an information or complaint under this Act, shall be constituted either of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty session, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorized to be done by more than one justice of the peace.

Form of appeal to quarter sessions.

37. If any party thinks himself aggrieved by any conviction or order made by a court of summary jurisdiction on determining any information or complaint under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:

(1.) The appeal shall be made to the next practicable court of quarter sessions for the county or place where the decision appealed from was given holden not less than twenty-one days after the decision of the court from which the appeal is made; and

(2.) The appellant shall, within ten days after the pronouncing by the court of the decision appealed from, give notice to the other party and to the court of summary jurisdiction of his intention to appeal and of the ground thereof: such notice of appeal shall be in writing signed by the person or persons giving the same, or by his, her, or their solicitor, on his, her, or their behalf; and

(3.) The appellant shall, within three days after such notice, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice may allow; and

(4.) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody:

(5.) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and if the matter be remitted to the court of summary jurisdiction the said last-mentioned court shall thereupon re-hear and decide the information or complaint in accordance with the opinion of

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the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.

Interpretation.

38. In this Act—

25 & 26 Vict. c. 61. 27 & 28 Vict. c. 101.

"County" has the same meaning as it has in the Highway Acts, 1862 and 1864, except that every liberty not being assessable to the county rate of the county or counties within which it is locally situate shall, for the purposes of this Act other than those relating to the formation and alteration of highway districts, and the transfer of the powers of a highway board, be deemed to be a separate county :

"County authority" means the justices of a county in general or quarter sessions assembled :

"Borough" means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and the Acts amending the same :

25 & 26 Vict. c. 61. 27 & 28 Vict. c. 101.

"Highway district" means a district constituted in pursuance of the Highway Act, 1862, and the Highway Act, 1864, or one of such Acts :

"Highway board" means the highway board having jurisdiction within a highway district :

25 & 26 Vict. c. 61. 27 & 28 Vict. c. 101.

"Highway parish" means a parish or place included or capable of being included in a highway district in pursuance of the Highway Acts, 1862 and 1864, or one of such Acts :

"Highway authority" means as respects an urban sanitary district the urban sanitary authority, and as respects a highway district the highway board, and as respects a highway parish the surveyor or surveyors or other officers performing similar duties :

38 & 39 Vict. c. 55.

"Rural sanitary district" and "rural sanitary authority" mean respectively the districts and authorities declared to be rural sanitary districts and authorities by the Public Health Act, 1875 :

38 & 39 Vict. c. 55.

"Urban sanitary district" and "urban sanitary authority" mean respectively the districts and authorities declared to be urban sanitary districts and authorities by the Public Health Act, 1875, except that for the purposes of this Act no borough having a separate court of quarter sessions, and no part of any such borough, shall be deemed to be or to be included in any such district, and where part of a parish is included in such district for the purpose only of the repairs of the highways such part shall be deemed to be included in the district for the purposes of this Act :

18 & 19 Vict. c. 120.

"The metropolis" means the parishes and places mentioned in the schedules A., B., and C., annexed to the Metropolis Management Act, 1855, and any parish to which such Act may be extended by order in council in manner in the said Act provided ; also the city of London and the liberties of the said city :

"Quarter sessions" includes general sessions :

"Petty sessional division" means any division for the holding a special sessions formed or to be formed under the provisions of the Act of the ninth year of the reign of His late Majesty King George the Fourth, chapter forty-three, or any Act amending the same ; also any division of a county or of

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a riding, division, parts, or liberty of a county, having a separate commission of the peace, in and for which petty sessions or special sessions are usually held, whether in one or more place or places in accordance with any custom, or otherwise than under the said last-mentioned Act; but does not include any city, borough, town corporate, or district constituted a petty sessional division by the Act of the session, of the twelfth and thirteenth years of the reign of Her present Majesty, chapter eighteen, intituled "An Act for the holding of petty sessions of the peace in boroughs, and for providing places for the holding of such petty session in counties and boroughs:"

"Locomotive" means a locomotive propelled by steam or by other than animal power:

"Person" includes a body of persons corporate or unincorporate.

AN ACT

FOR PREVENTING THE INTRODUCTION & SPREADING OF INSECTS DESTRUCTIVE TO CROPS.

40 & 41 VICT. CAP. 68.

14TH AUGUST, 1877.

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Great Britain.

Section 1.

Power to privy council to make orders for preventing introduction of destructive insects.

1. The lords and others of Her Majesty's most honourable privy council (in this Act referred to as the privy council) may from time to time make such orders as they think expedient for preventing the introduction into Great Britain of the insect designated as *Doryphora decemlineata*, and commonly called the Colorado beetle.

Any such order, if the privy council think fit, may prohibit or regulate the landing in Great Britain of potatoes, or of the stalk and leaves of potatoes, or other vegetable substance, or other article, brought from any place out of Great Britain, the landing whereof may appear to the privy council likely to introduce the said insect into Great Britain, and may direct or authorise the destruction of any such article, if landed.

If any person lands or attempts to land any article in contravention of any order under this Act, such article shall be liable to be forfeited in like manner as goods the importation whereof is prohibited by the Acts relating to the customs are liable to be forfeited (*a*); and the person so offending shall be liable, according to those Acts, to such penalties as are imposed on persons importing or attempting to import goods the importation whereof is prohibited by those Acts.

Power to privy council to make orders for preventing spreading of destructive insects.

2. The privy council may from time to time make such orders as they think expedient for preventing the spreading in Great Britain of the said insect.

Any such order may, if the privy council think fit, direct or authorise the removal or destruction of any crop of potatoes or other crop

(*a*) The term "Customs Acts" is by the Contagious Diseases (Animals) Act, 1878, section 5, defined to mean the Customs Consolidation Act, 1876, and any enactment amending or substituted for that Act. See note to section 65 of the Contagious Diseases (Animals) Act, 1878, *post*.

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or substance on which the said insect in any stage of existence is found, or to or by means of which the said insect may appear to the privy council likely to spread, and the entering on any land for the purpose of such removal or destruction, or for the purpose of any examination or inquiry authorised by the order, or for any other purpose of the order.

Any such order may, if the privy council think fit, prohibit the keeping, selling, or exposing or offering for sale, or the keeping of living specimens of the said insect, in any stage of existence, or the distribution in any manner of such specimens.

Any such order may impose penalties for offences against the order, not exceeding ten pounds for any offence; and those penalties shall by virtue of this Act be recoverable, with costs, on summary conviction before two justices of the peace, and shall be applied as penalties recovered under the Contagious Diseases (Animals) Act, 1869 (*b*), are applicable.

32 & 33 Vict. c. 96.

Compensation for crops.

3. Where by any order under this Act the privy council direct or authorise the removal or destruction of any crop, they may direct or authorise the payment by the local authority of compensation for the crop; and the local authority shall pay the same, subject and according to the following provisions:

(1.) In the case of a crop on which the said insect, in any stage of existence, is found, the compensation shall not exceed one-half of the value of the crop.

(2.) In every other case the compensation shall not exceed three-fourths of the value of the crop.

(3.) The value of the crop shall in each case be taken to be the value which, in ordinary circumstances, the crop would have had at the time of its removal or destruction.

(4.) The local authority may, if they think fit, require the value of the crop to be ascertained by their officer or by arbitration.

(5.) The local authority may, if they think fit, withhold compention if, in relation to the crop, the owner or the person having charge thereof, has, in their judgment, done anything in contravention of, or failed to do anything in compliance with, any order under this Act.

Local authorities and execution of orders of council (*c*).

4. The local authorities under the Contagious Diseases (Animals) Act, 1869, with their respective districts local rates, clerks, and committees, shall be in like manner local authorities for the purposes of this Act.

The privy council may, if they think fit, require a local authority to carry into effect any order of the privy council under this Act.

The expenses incurred and compensation paid by a local authority in pursuance of any order under this Act shall be paid by them out of the local rate.

Every local authority shall keep, in such manner and form as the privy council from time to time by order direct, a record relative to

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(*b*) The Contagious Diseases (Animals) Act, 1878, section 4, enacts that that Act shall, instead of the Act here named, be deemed to be referred to in this Act, and penalties under the provisions of that Act shall be recoverable in manner provided in Parts II. and III. of the first-named Act. Penalties are recoverable under section 63. Part III. refers to Scotland.

(*c*) The local authorities, under the Contagious Diseases (Animals) Act, 1878, are described in section 9, second schedule.

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proceedings in pursuance of any order under this Act, stating the date of the removal or destruction of any crop or substance, and other proper particulars, which record shall be admitted in evidence.

Publication of orders of council.

5. Every order of the privy council under this Act shall be published, if it relates to England, in the London Gazette, and if it relates to Scotland, in the Edinburgh Gazette; save that, where the order affects only specified lands, the insertion in the London or Edinburgh Gazette (as the case may require) of a notice of the making of the order shall be sufficient.

Any order of the privy council under this Act shall be published by any local authority, to whom it is sent by the privy council for publication, in such manner as the privy council direct, and subject to, or in the absence of, any such direction, in such manner as the local authority think sufficient and proper to ensure publicity.

Exercise of powers of Act by privy council.

6. The powers by this Act conferred on the privy council may be exercised by any two or more of the lords and others of the privy council, and, as regards the making of orders affecting only specified lands, may be exercised by the lord president or one of Her Majesty's principal secretaries of state.

General.

Orders to be laid before houses of parliament.

8. (*a*) Every order under this Act shall be laid before both houses of parliament within ten days after the making thereof, if parliament is then sitting, and if not, then within ten days after the next meeting of parliament.

Expenses of Act.

9. The expenses of the execution of this Act, other than expenses and compensation paid by local authorities, shall be paid out of money to be provided by parliament.

Short title.

10. This Act may be cited as "The Destructive Insects Act, 1877."

(*a*) Section 7 relates to Ireland only.

AN ACT

FOR THE BETTER PROTECTION OF INFANT LIFE.

35 & 36 VICT. CAP. 38.

25TH JULY, 1872.

WHEREAS it is expedient to make better provision for the protection of infants intrusted to persons to be nursed or maintained for hire or reward in that behalf:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Interpretation clause.

1. The term "Summary Jurisdiction Acts" means as follows:

As to England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Acts amending the same;

As to Scotland, "The Summary Procedure Act, 1864;"

As to Ireland, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district or of the police of such district; and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act amending the same:

The term "court of summary jurisdiction" means and includes any justice or justices of the peace, sheriff or sheriff substitute, metropolitan police magistrate, stipendiary or other magistrate or authority, by whatever name called, to whom jurisdiction is given by the summary jurisdiction Acts or any Acts therein referred to, or to proceedings before whom the provisions of the Summary Jurisdiction Acts are or may be made applicable:

In this Act the words "local rate," "local jurisdiction," and "local authority," mean, in reference to the districts mentioned in the first column of the First Schedule annexed hereto, the rate, jurisdiction, and authority mentioned in the second, third, and fourth columns of the said schedule, and such schedule and the notes thereto annexed shall be deemed to be part of this Act.

Houses of persons retaining or receiving for

2. From and after the commencement of this Act it shall not be lawful for any person to retain or receive for hire or reward in that behalf more than one infant, and in case of twins more than two infants, under the age of one year for the purpose of nursing or

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hire two or more infants for the purpose of nursing to be registered.

maintaining such infants apart from their parents for a longer period than twenty-four hours, except in a house which has been registered as herein provided.

Register of names and houses to be kept by local authority.

3. The local authority shall cause a register to be kept in which shall be entered the name of every person applying to register any house for the purposes of this Act, and the situation of every such house, and the local authority shall from time to time make bye-laws for fixing the number of infants who may be received into each house so registered; the registration shall remain in force for one year; no fee shall be charged for registration. Every person who receives or retains any infant in contravention to the provisions of this Act shall be guilty of an offence against this Act.

Local authority may refuse to register.

4. The local authority may refuse to register any house, unless they are satisfied that such house is suitable for the purposes for which it is to be registered, and unless they are satisfied by the production of certificates that the person applying to be registered is of good character, and able to maintain such infants.

Persons whose names and houses are registered to keep a register of infants and to produce it when lawfully required.

5. The person registered as aforesaid shall immediately enter in a register to be kept by him the name, sex, and age of each infant under his care, and the date at which and the names and addresses of the persons from whom they were received, and shall also enter in the said register the time when and the names and addresses of the person by whom every such infant received and retained as aforesaid shall be removed immediately after the removal of such infant, and shall produce the said register when required to do so by the local authority; and in the event of his refusing so to produce the said register or neglecting to enter in a register the name, sex, and age of each of the said infants, and the date at which and the names and addresses of the persons from whom they were received and by whom they were removed respectively, shall be liable to a penalty not exceeding five pounds. The person registered shall be entitled to receive gratuitously from the local authority a book of forms for the registration of infants; such register may be in the form contained in the second schedule to this Act.

Forgery of certificate and falsifying register.

6. If any person shall make false representations with a view to being registered under this Act, or shall forge any certificate for the purpose of this Act, or make use of any forged certificate, knowing it to be forged, or shall falsify any register kept in pursuance of this Act, he shall be guilty of an offence against this Act (*a*).

Local authority may strike name and house off register for neglect, &c.

7. If it shall be proved to the satisfaction of the local authority that any person whose house has been so registered as aforesaid has been guiltyof serious neglect, or is incapable of providing the infants intrusted to his care with proper food and attention, or that the house specified in the register has become unfit for the reception of infants, it shall be lawful for the local authority to strike his name and house off the register.

Inquest to be held on death of infant.

8. The person registered as aforesaid shall within twenty-four hours after the death of every infant so retained or received cause notice thereof to be given to the coroner for the district within which the

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(*a*) As to prosecution of offences, see section 11; and punishment, section 9.

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said infant died, and the said coroner shall hold an inquest on the body of every such infant unless a certificate under the hand of a registered medical practitioner shall be produced to him by the person so registered certifying that such registered medical practitioner has personally attended or examined such infant, and specifying the cause of its death, and the said coroner shall be satisfied by such certificate that there is no ground for holding such inquest. If the person so registered shall neglect to give notice as aforesaid he shall be guilty of an offence under this Act.

Punishment for offence under this Act.

9. Every person guilty of an offence under this Act shall be liable to imprisonment for not more than six months, with or without hard labour, or to a penalty not exceeding five pounds, as a court of summary jurisdiction may award, and shall in addition be liable to have his name struck off the register.

Payment of expenses out of local rate.

10. All expenses incurred in and about the execution of this Act shall be defrayed out of the local rate (*b*).

Offence how to be prosecuted.

11. Any offence under this Act may be prosecuted before a court of summary jurisdiction (*c*) in manner provided by the Summary Jurisdiction Acts: Provided as follows:

The description of any offence under this Act in the words of such Act, or as near thereto as may be, shall be sufficient in law:

Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant or prosecutor:

The court of summary jurisdiction, when hearing, trying, determining, and adjudging an information or complaint in respect of any offence or matter arising under this Act, shall be constituted either of two or more justices of the peace in petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorized to be done by more than one justice of the peace.

Application of penalties recovered under the Act.

12. Any moneys arising from fees or fines under this Act shall be paid to the account of the local rate, and be applied to the purposes to which that rate is applicable.

Exceptions from provisions of Act.

13. The provisions of this Act shall not extend to the relatives or guardians of any infant retained or received as aforesaid, nor to institutions established for the protection or care of infants, nor to any person receiving any infant for the purpose of nursing or maintaining such infant under the provisions of any Act for the relief of the poor.

(*b*) In the metropolis, exclusive of the city of London, the rate or fund applicable to the payment of the general expenses of the board.

(*c*) See interpretation, section 1.

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Commencement of Act.

15. (a) This Act shall commence on the first day of November, one thousand eight hundred and seventy-two.

Short title.

16. This Act may be cited as "The Infant Life Protection Act, 1872."

THE FIRST SCHEDULE, REFERRED TO IN THE FOREGOING ACT.

ENGLAND.

District.	Local Rate.	Local Jurisdiction.	Local Authority.
Counties, except the metropolis and city of London.	The county rate or rate in the nature of a county rate.	Petty sessional division.	Justices in petty sessions.
The metropolis -	Rate or fund applicable to the payment of the general expenses of the board.	Area of the metropolis.	The metropolitan board of works.
City of London and the liberties thereof.	Consolidated sewers rate.	Area of the city of London and the liberties thereof.	Common council.
Boroughs - - -	The borough fund or borough rate.	Area of borough -	Council.

"County" shall not include a county of a city or county of a town, but shall include any riding, division, parts, or liberty of a county having a separate commission of the peace.

Where a county or liberty of a county having a separate commission of the peace is not divided into petty sessional divisions, such county or liberty of a county shall itself for the purposes of this Act be deemed to be a petty sessional division of the county by which it is constituted or in which it is geographically situate.

"The metropolis" shall include all parishes and places in which the metropolitan board of works have power to levy a main drainage rate, exclusive of the city of London and the liberties thereof.

"Borough" shall mean any place for the time being subject to an

(a) Section 14 applies to Scotland only.

Sched. 1.

Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act made to provide for the Regulation of Municipal Corporations in England and Wales," and having a separate court of quarter sessions.

Every place that is not, according to the foregoing definitions, a borough, a county, or part of the metropolis, or city of London, or the liberties thereof, shall be deemed to form part of the county, as hereinbefore defined, to the county rate of which it is assessed, or, if not so assessed, of the county within which it is situate (*b*).

THE SECOND SCHEDULE, REFERRED TO IN THE FOREGOING ACT.

REGISTER OF INFANTS.

Date at which received.	Name.	Sex.	Age.	Name and Address of Person from whom received.	Date at which removed.	Name and Address of Person by whom removed.

(*b*) The remainder of this schedule applies to Scotland and Ireland exclusively.

AN ACT

TO PROVIDE BETTER DWELLINGS FOR ARTIZANS AND LABOURERS.

31 & 32 VICT. CAP. 130.

31ST JULY, 1868.

WHEREAS it is expedient to make provision for taking down or improving dwellings occupied by working men and their families which are unfit for human habitation, and for the building and maintenance of better dwellings for such persons instead thereof: Be it enacted by the Queen's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

Short title.

1. In citing this Act it shall be sufficient to use the words "The Artizans and Labourers Dwellings Act, 1868."

Application of Act, and definition of "local authority," "local rate," and "clerk of local authority."

2. This Act shall apply only to the places named in the first column of Table (A.) in the first schedule annexed hereto; and "local authority," "local rate," and "clerk of local authority" shall mean "the bodies of persons," (*a*) "rate," and "officer" in that table in that behalf mentioned; and the said table shall be of the same force as if it were enacted in the body of this Act: Provided always, that this Act shall not apply to any city, borough, town, or place that would otherwise be included within the said table, the population whereof does not according to the census for the time being in force amount to the number of ten thousand persons.

Interpretation of terms: "Street" and "square:"

3. The following words and expressions have in this Act the following meanings, unless excluded by the subject or context; (that is to say,)

The word "street" includes any court, alley, street, square, or row of houses:

(*a*) In the metropolis, (exclusive of the city of London and its liberties) the vestries and district boards under the 18 & 19 Vict. c. 120, within their respective parishes and districts. The "local rate" is declared to be the rate to be levied for defraying the expenses of the last-named Act, and the "clerk of the local authority" the clerk of the vestries or district boards.

Section 3.

The word "premises" means any dwelling house or inhabited building, and the site thereof, with the yard, garden, outhouses, and appurtenances belonging thereto or usually enjoyed therewith. "Premises:"

The expression "owner" in addition to the definition given by the Lands Clauses Act (*b*) shall include all lessees or mortgagees of any premises required to be dealt with under this Act, except persons holding or entitled to the rents and profits of such premises for a term of years, of which twenty-one years do not remain unexpired: "Owner:"

"Person" shall include a body of persons, corporate or unincorporate: "Person:"

"Quarter sessions" shall include general sessions, and in Ireland shall mean, in towns and boroughs where there are separate quarter sessions, the quarter sessions of said boroughs and towns, and in boroughs where there are no separate quarter sessions, the quarter sessions of the divisions of the courts in which such towns or boroughs shall be situate: "Quarter sessions:"

"Officer of health" shall mean and include medical officer of health, sanitary inspector, or any statutory officer performing the duties which a medical officer or sanitary inspector performs under or by virtue of any act of parliament: "Officer of health:"

In all cases in which the name of a local authority, local court, magistrate, or officer having any local jurisdiction in respect of their or his office is referred to, without mention of the locality to which the jurisdiction extends, such reference is to be understood to indicate the local authority, local court, magistrate, or officer having jurisdiction in that place within which are situate the premises or other subject matter or any part thereof to which such reference applies: "Local officer," &c.:

"The metropolis" shall not include the city of London or the liberties thereof, but shall include all other parishes or places within the jurisdiction of the metropolitan board of works: "The metropolis:"

"Borough" in England shall mean any place for the time being subject to the Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled, "An Act to provide for the Regulation of Municipal Corporations in England and Wales": "Borough" in England.

"Burgh" in Scotland shall mean any place returning or contributing to return members to parliament, or any place subject to the jurisdiction of a town council: "Burgh" in Scotland:

"Borough" in Ireland shall mean any place for the time being subject to an Act passed in the session of the third and fourth years of the reign of her present majesty, chapter one hundred and eight, and intituled, "An Act for the Regulation of Municipal Corporations in Ireland." "Borough" in Ireland:

4. If in any place to which this Act applies there is no officer of health within the meaning of this Act, the local authority, with the approval of one of Her Majesty's principal secretaries of state, shall forthwith appoint such an officer for such period as shall be necessary, As to appointment of officers of health and

(*b*) The Land Clauses Act, 1845, 8 Vict. c. 18, s. 3, defines the word "owner" as any person or corporation who under the provisions of that or a special Act would be enabled to sell and convey lands to the promoters of the undertaking.

Section 4. payment of salaries (*a*).

shall assign him his duties, and pay him such salary or emolument out of the local rate as they, with such approval as aforesaid, shall think fit. The local authority, with the like approval, may from time to time remove any officer appointed under this section, and in manner aforesaid appoint another officer in his place.

Officer of health to report as to condition of streets.

5. If in any place to which this Act applies the officer of health (*b*) find that any premises (*c*) therein are in a condition or state dangerous to health so as to be unfit for human habitation, (*d*) he shall report the same in manner hereinafter provided to the local authority.

Officer of Health to deliver copies of report to clerk of local authority, who shall refer the same to a surveyor, &c.

6. Every report made under this Act by the officer of health (*e*) shall be made in writing and delivered to the clerk of the local authority, and the local authority shall refer such report to a surveyor or engineer, who shall thereupon consider the report so furnished to him, and report to the local authority what is the cause of the evil so reported on, and the remedy thereof, and if such evil is occasioned by defects in any premises, whether the same can be remedied by structural alterations and improvements or otherwise, or whether such premises, or any and what part thereof, ought to be demolished.

Local authority to cause copies of reports to be given to owner, who may object to the same, and to prepare plan and specification of required works.

7. Upon receipt of the report of the surveyor and engineer the local authority shall cause copies of both the reports to be given to the owner, with notice of the time and place appointed by the local authority for the consideration thereof, and such owner shall be at liberty to attend and to state his objections (if any) to such reports, or either of them, including therein any objection that the necessary works ought to be done by or at the expense of some other person or persons, or at the expense of the parish or district in which the premises are situate; and on such objections the local authority shall make an order in writing, signed by the clerk of such local authority, which shall be subject to appeal in manner hereinafter mentioned; and if such objections are overruled, the local authority, if they deem it necessary, shall caused to be prepared a plan and specification of the works (if any), and an estimate of the cost of such works, required to be executed.

Clerk of local autho-

8. The clerk of the local authority shall thereupon forthwith give notice to the owner of the premises, informing him that a plan and

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(*a*) This section is repealed by the Public Health Act, 1872, section 11, enacting that all powers and duties conferred and imposed on officers of health under this Act shall be exercised and performed by the medical officers of health from time to time appointed under the Sanitary Acts or that Act, or any local Act.

(*b*) See note to last section.

(*c*) See definition of "premises," section 3.

(*d*) Where the officer of health reported that several houses were unfit for human habitation, and the local authority (the vestry) made an order for the demolition of the whole, and the sessions on appeal made an order directing structural alterations in the whole of the houses, the Queen's Bench decided that the order of the vestry was good; *Flight* v. *Vestry of St. George's, Hanover Square*, 25 L. T. (N.S.) 24; 35 J. P. 389 (*nom. R.* v. *Flight*.)

(*e*) See note to section 4, *supra*.

Section 8.

rity to give notice to owner of plan, &c. of required works having been prepared.

specification and estimate of the cost of such works as are required in reference thereto have been prepared, and that such plan and specification and estimate may, if such owner think fit, be inspected and transcribed by him or his agent at the office of the clerk of the local authority without charge; and any such owner may at any time within three weeks after the receipt of such notice state in writing to the clerk of the local authority, any objection which he may entertain to the said plan, specification, and estimate, or any of them, and may attend at a time and place to be appointed for such purpose by the local authority to support such objections; and the local authority shall thereupon make such order in relation thereto as they may think fit; and if they decide that any alteration is to be made in the said plan, specification, and estimate, the local authority shall cause such alteration to be made accordingly, and the plan and specification and estimate so amended shall be the plan and specification and estimate according to which the works shall be executed.

Persons aggrieved by order of local authority may appeal against the same.

9. Any person aggrieved by any order of the local authority, or his agent, may appeal against the same to the court of quarter sessions held next after the making of the said order, but the appellant shall not be heard in support of the appeal unless, within one calendar month after the making of the order appealed against, he give to the clerk of the local authority notice in writing stating his intention to appeal, together with a statement in writing of the grounds of appeal, and shall, within two days after giving such notice, enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the said court, and to abide the order of and pay such costs as may be awarded by the court or any adjournment thereof; and the court, upon the appearing of the parties, or upon their making default, shall have full power and jurisdiction to make such order and give such directions as under the circumstances shall seem just, and may, according to its discretion, award such costs to the party appealing or appealed against as they think proper, and the determination of the court in or concerning the premises shall be conclusive and binding on all persons to all intents and purposes whatsoever: Provided,—

First, that if there be not time to give such notice and enter into such recognizance as aforesaid, then such appeal may be made to, and such notice, statement, and recognizance be given and entered into for the next sessions at which the appeal can be heard:

Secondly, that on the hearing of the appeal no grounds of appeal shall be gone into or entertained other than those set forth in such statement as aforesaid:

Thirdly, that in any case of appeal the court shall, at the request of either party, state the facts specially for the determination, in England or Ireland, of Her Majesty's Court of Queen's Bench, or in Scotland of either division of the court of session, in which case it shall be lawful to remove the proceedings, by writ of *certiorari* or by petition, into the said Courts of Queen's Bench or to the court of session respectively:

Fourthly, that pending any appeal no work shall be done nor proceedings taken under any order until after the determination of such appeal, or it shall cease to be prosecuted.

Owner may appeal where decision of

10. If the owner appeal from the decision of the local authority upon the objection that he is not responsible for the state and condition of his premises, he shall be bound to give notice of his appeal,

Section 10. local authority is against him.

and a statement in writing of the ground thereof, to the person or persons, or to the parish or district, alleged by him to be the occasion of his premises being in such a state or condition as to render them liable to be reported upon under the provisions of the Act, and such person or persons, or parish or district, may appear before the court, and be heard against his or their alleged liability.

Where local authority decide in favour of owner, reports and notices to be sent to parties liable.

11. If the local authority shall decide in favour of the objection of the owner of the premises that some other person or persons, or that the parish or district in which the premises are situate, is or are responsible for the state and condition of his premises, the local authority shall forthwith send copies of the reports of the officer of health and of the surveyor or engineer to such person or persons, or to the officer of such parish or district, together with notice of his or their alleged liability, and shall appoint a time and place for hearing the parties so alleged to be liable, and give notice thereof to the said parties and also to the owner of the premises, and the local authority shall make such order thereupon as to them shall seem just, and the same shall be subject to appeal in manner aforesaid.

On representation by householders that disease exists in any house, officer of health to inspect and report.

12. If and whenever any four or more householders living in or near to any street by writing under their hands represent to the officer of health that in or near that street any premises are in a condition or state dangerous to health so as to be unfit for human habitation, he shall forthwith inspect the premises, and report thereon; but the absence of any such representation shall not excuse him from inspecting any premises, and reporting thereon.

If local authority neglect to enforce Act, secretary of state may compel it to proceed.

13. In the event of the local authority declining or neglecting for the space of three calendar months after receiving such report to take any proceedings to put this Act in force, the householders who signed such representation may address a memorial to the secretary of state (*a*) stating the circumstances, and asking that an inquiry be made, and upon receipt of such memorial the said secretary of state may direct the local authority to proceed under the provisions of the Act, and such direction shall be binding on the local authority.

Owner to signify to clerk of local authority whether he is willing to execute specified works.

14. Within three calendar months after the service on the owner of the order by the clerk of the local authority, or, in the case of appeal, within one calendar month after the order of quarter sessions, or, in the event of a further appeal, within one calendar month after the order of the court of final appeal, the persons so served with the order of the local authority shall each of them signify in writing to the clerk of the local authority whether he is willing to effect the works required to be executed; and where two or more persons shall signify, the right of effecting the works shall be given first to the person whose ownership is first or earliest in title.

Service of notice on owner whose name and residence are known.

15. Where the owner of the premises and his residence or place of business are known to the local authority, it shall be the duty of the clerk of the local authority, if the owner be residing or have a place of business within the district of such local authority, to give any notice by this Act required to be served on him to the owner, or for

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(*a*) These powers and duties are now transferred to the local government board by the 34 & 35 Vict. c. 70. See section 1, and schedules.

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him, to some inmate of his place of residence or business within the place; and if he be not residing within such district, or has no place of business therein, then to send the notice by post in a registered letter addressed to the owner at his place of residence or business; provided that the notice served upon the agent of the owner shall be deemed notice to the owner.

Service of notice on owner whose name or residence is not known.

16. Where the owner of the premises or his residence or place of business is not known to, or after diligent inquiry cannot be found by the local authority, then the clerk of the local authority may serve the notice by leaving it, addressed to the owner, with some occupier of the premises, or if there be not an occupier, then by causing it to be put up on some conspicuous part of the premises.

Notices to be signed by the local authority.

17. Every notice required to be given by the clerk of the local authority by this Act shall be in writing or print, or partly in writing and partly in print, and shall be signed by the clerk of the local authority or deputy appointed by him.

Local authority to require owners to execute works as in specification.

18. The owner on whom the local authority shall have imposed in the first instance the duty of executing the work shall within two calendar months thereafter, commence the works as shown on the plan and described in the specification, and shall diligently proceed with and complete the same in conformity with the specification to the satisfaction of the surveyor or engineer appointed by the local authority; and if such owner shall fail therein, the local authority shall require the owner next in order as aforesaid to execute the said works, and in case of his default shall require the remaining owners in their order as aforesaid; and if all such owners shall make default, the local authority shall, as the case may seem to them to require, either order the premises to be shut up or to be demolished, or may themselves execute the required works in conformity with the specification.

Proceedings of local authority in case owners neglect.

Provision in case local authority themselves execute the works.

19. Where the local authority themselves execute the works, they may apply to the court of quarter sessions having jurisdiction over the place of which they are the local authority for an order charging on the premises on which the works have been executed the amount of all costs, charges, and expenses that have been incurred by such authority in or about the execution of such works, including the costs of obtaining the order; and the court of quarter sessions, when satisfied of the amount so expended, shall make an order accordingly, charging on the premises the amount of such costs, charges, and expenses, together with interest at the rate of four pounds per cent. per annum, and such order shall be filed and recorded in manner hereinafter mentioned, and thereupon the amount of principal and interest thereby secured shall be a charge on the house, bearing interest at four per centum, and having priority over all other estates, incumbrances, and interest whatsoever, and the local authority shall, for the purpose of obtaining satisfaction of the monies so charged, or of any interest thereon, be deemed to be a mortgagee of an absolute estate in the house, and shall be invested with all the powers conferred on mortgagees by Part II. of the Act of the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter one hundred and forty-five, and in Scotland such order shall be recorded in the appropriate register of sasines.

Local authority to pay

20. If the requirements of the order involve the total demolition, and not the improvement of the premises specified therein, the owner

Section 20 compensation when total demolition required.

shall, within three months after service of the order, proceed to take down and remove the premises, and if such owner fail therein, then the local authority shall proceed to take down and remove the same; and the local authority shall sell the materials, and, after deducting the expenses incident to such taking down and removal, pay over the balance of monies, if any, to the owner.

Determination of tenancies.

21. Where at the time of making the order the premises specified therein, or any part thereof, are or is subject to any tenancy from year to year, or for a year or for any less term, the local authority shall give notice to every such tenant, stating the time at which such tenancy will be determined.

Remedies of owner for breach of covenant, &c., not to be prejudiced.

22. Provided always, that nothing in this Act contained shall prejudice or interfere with the rights or remedies of any owner for the breach, nonobservance, or nonperformance of any covenant or contract entered into by a tenant or lessee in reference to any premises in respect of which any order shall be made by a local authority; and if any owner shall be obliged to take possession of any premises in order to comply with any order made under the provisions of this Act, such entry or taking posseesion shall not affect his right to avail himself of any such breach, nonobservance, or nonperformance that may have occurred prior to his so taking possession.

Owner instead of effecting improvements may take down premises.

23. If the order be that the premises require improvement, the owner, including therein the owner of the first estate of inheritance, if he think fit, may, instead of effecting the works required by the plan and specification, take down the premises; but in every such case, and also in the event of the owner desiring to retain the site of the premises required by the order to be totally demolished, no house or other building or erection shall be erected on all or any part of the site of the premises so taken down which shall be injurious to health; and the local authority may at any time make an order upon the owner to abate or alter the said house, building, or erection, as the case may require; and in the event of noncompliance with such order the local authority may, at the expense of the owner thereof, abate or alter any house or other building or erection at any time wholly or partly erected contrary to the provisions of this section.

Application may be made to justices where more than one owner of premises included in order under Act, and any one owner neglects to comply with such order.

24. Where there are two or more owners of any premises, and it appears to any two justices in petty sessions, on application of any owner of such premises, that the interest of the applicant in the premises will be prejudiced by the neglect and default of any other owner to deal with the premises in conformity with the order so made, it shall be lawful for such justices, if the applicant undertake to their satisfaction to bring the premises into conformity with such order, to make an order empowering the applicant forthwith to take possession of the premises and to do all such works as may be necessary for bringing the same into conformity with such order, and within such time as shall be fixed by such justices, and on noncompliance by such last-mentioned applicant with his undertaking it shall be lawful for the justices to make a like order in favour of any other owner.

Grant of annuity to owner on completion of works.

25. Where any owner has completed any works required to be executed by a local authority in pursuance of this Act, he may on the completion thereof apply to the local authority for a charging order charging on the premises on which the works have been executed an annuity as compensation to the owner for the expendi-

ture incurred by him in executing such works, and shall produce to the local authority the certificate of their surveyor or engineer that the works have been executed to his satisfaction, and also the accounts and vouchers for such works, and the local authority, when satisfied that the owner has duly executed such works, shall make a charging order accordingly. Section 25.

The annuity charged shall be a sum of six pounds for every £100 of such expenditure, and so in proportion for any less sum, to commence from the date of the order, and to be payable for a term of thirty years to the owner named in such order, his executors, administrators, or assigns.

Charging orders made under this Act shall be made according to the form marked A. in the second schedule hereto annexed, or as near thereto as the circumstances of the case will admit.

The costs of obtaining the order to be allowed by the local authority shall be deemed to be part of the expenditure incurred by the owner.

Incidence of charge.

26. Every annuity created by a charging order under this Act shall be a charge on the premises comprised in the order, having priority over all existing and future estates, interests, and incumbrances, with the exception of quitrents and other charges incident to tenure, tithe commutation rentcharges, and any charges created under any Act authorizing advances of public money; and where more annuities than one are chargeable under this Act on any premises, such annuities shall, as between themselves, take order according to their respective dates.

Charges recoverable as rentcharges in lieu of tithes.

27. Every annuity charged on any premises by a charging order under this Act may be recovered by the persons for the time being entitled to the same by the same means and in the like manner in all respects as if it were a rentcharge granted by deed out of the premises by the owner thereof.

An order to be evidence of compliance with Act.

28. An order made in pursuance of this Act charging an annuity on any premises shall be, both at law and in equity, conclusive evidence that all notices, Acts, and proceedings by this Act directed with reference to or consequent on the obtaining such order, or the making such charge, have been duly served, done, and taken, and that such charge has been duly created, and that it is a valid charge on the premises declared to be subject thereto.

Registry of charging order on premises in Middlesex and Yorkshire.

29. Every charging order made in pursuance of this Act relating to premises in Middlesex or Yorkshire shall be registered in the same manner respectively as if such charge were made by deed by the absolute owner of such lands without the aid of this Act; and a copy of every such charging order of the certificate of such surveyor or engineer as aforesaid, together with a copy of the accounts as passed by the local authority, and which copies shall be certified to be true copies by the clerk of such local authority, shall, within six months after the date of such charging order, be deposited with the clerk of the peace of the county in which the premises are situate, who shall be entitled to a fee of ten shillings for filing and recording the same; and every charging order made in pursuance of this Act relating to premises in Scotland shall be recorded in the appropriate register of sasines.

Assignmen of charge.

30. The proprietor of any charge may, by deed under seal, stamped with the same *ad valorem* stamp as if it were an assignment of a

Section 30.

charge created by deed, assign the benefit of the charging order, or of any portion of the charge comprised therein, to any other person; and on such assignment being executed the assignee shall have the same rights under the order as the proprietor would have had if no such assignment had been executed; and any assignee of a charging order may, by deed stamped in manner aforesaid, assign the charge to any other person. Any assignment of a charging order may be in the form marked B. in the schedule hereto, or in any other convenient form.

As to expenses of local authority.

31. All expenses incurred by the local authority in pursuance of this Act shall be defrayed by them out of a special local rate, not exceeding twopence in the pound in any year, which they are hereby empowered to assess and levy for the purposes of this Act.

Power to public works loan commissioners to advance moneys to local authority

32. The public works loan commissioners, as defined by the Public Works Loan Act, 1853, may, if they think fit, lend to any local authority, and any local authority may borrow from the said commissioners, such sums as the said authority may require for the purposes of this Act, but the amount of every loan shall be sanctioned by the lords commissioners of the treasury.

Service of notice on the local authority.

33. Any summons, notice, writ, or other proceeding at law or in equity, or otherwise, in relation to carrying into effect the objects and purposes of this Act, required to be served upon the local authority, may be lawfully served by delivering the same to the clerk of the local authority, or leaving the same at his office with some person employed there by him.

Notices served by local authority to be signed by the clerk.

34. Any notice, demand, or other written document served by the local authority for the purposes of this Act shall be signed by the clerk of the local authority.

Penalty for obstructing officer of health, &c., in execution of Act.

35. Where any person at any time obstructs the officer of health or other person acting in the performance of anything which the local authority or their officers respectively are by this Act required or authorized to do, every person so offending shall for every such offence forfeit not exceeding twenty pounds.

Penalty for preventing execution of Act.

36. If the occupier of any premises prevents the owner thereof, or if the owner or occupier of any premises prevents the officer of health, or their officers, agents, servants, or workmen, from carrying into effect with respect to the premises any of the provisions of this Act, after notice of the intention so to do has been given to the occupier, or, as the case shall be, to the owner, any justice on proof thereof may make an order in writing requiring the occupier to permit the owner, or, as the case shall be, requiring the owner or occupier, or both, to permit the officer of health, or the local authority, and their officers, agents, servants, and workmen, to do all things requisite for carrying into effect with respect to the premises the provisions of this Act; and if at the expiration of ten days after the service of such order of the justice the occupier or owner fails to comply therewith, every person so offending shall for every day during which the failure continues forfeit not exceeding twenty pounds: Provided that during any such failure by the occupier the owner, unless assenting thereto, shall not be liable to the forfeiture.

Appearance of local authority.

37. The local authority may appear before any judge, justices, borough magistrates, sheriff, or sheriff substitute, by their clerk, and

any company or body corporate may appear before the said magistrate or magistrates by any member of their board of management. Section 37.

Recovery of penalties.

38. Penalties under this Act may be recovered before two justices in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders," or any Act amending the same, and in Scotland by summary complaint before the sheriff, sheriff substitute, or two justices, or in boroughs before the magistrates, in manner provided by "The Summary Procedure Act, 1864," and in Ireland in manner directed by "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same.

Application of Act to Scotland.

39. For the purpose of adapting this Act to Scotland the following alteration shall be made; that is to say,

1. "The Lands Clauses Consolidation Act (Scotland) 1845," shall be substituted for "The Lands Clauses Consolidation Act, 1845:"
2. All the judicial powers given to justices in quarter sessions by this Act shall be exercised by sheriffs of counties or sheriff substitutes; and wherever by this Act an appeal is given to the court of quarter sessions, and thence to the court of Queen's bench, such appeal shall be to the sheriff of the county, and from him to the court of sessions in the usual manner.

Application of Act to Ireland.

40. For the purpose of adapting this Act to Ireland the words "The Lands Clauses Consolidation Act, 1845," shall mean "The Railway Act, Ireland, 1851," and the several Acts amending the same.

Jurisdiction of certain magistrates.

41. Any Act, power, or jurisdiction hereby authorized to be done or exercised by two justices may be done or exercised by the following magistrates within their respective jurisdictions; that is to say: As to England, by any metropolitan police magistrate or other stipendiary magistrate sitting alone at a police court or other appointed place, or by the lord mayor of the city of London, or any alderman of the said city, sitting alone or with others, at the Mansion House or Guildhall; as to Scotland, by the sheriff or sheriff substitute, or by any two magistrates of a burgh; and as to Ireland, by any one or more divisional magistrates of police in the police district of Dublin, and elsewhere by two or more justices of the peace in petty sessions.

SCHEDULES.

FIRST SCHEDULE.

TABLE A.

ENGLAND AND WALES.

Places to which Act applies.	Description of Local Authority.	Description of Local Rate.	Description of Clerk of Local Authority.
The city of London and the liberties thereof. Local Acts { 11 & 12 Vict. c. 163. 14 & 15 Vict. c. 91.	Commissioners of sewers of the city of London. Local Act 11 & 12 Vict. c. 163.	The consolidated rate 11 & 12 Vict. c. 163, s. 158.	The clerk to the commissioners. 11 & 12 Vict. c. 163, s. 25.
The Metropolis . . .	The vestries and district boards under the Act 18 & 19 Vict. c. 120, within their respective parishes and districts.	Rate to be levied for defraying the expenses of the Act 18 & 19 Vict. c. 120.	Clerk of the vestries or district boards.
Boroughs not within the jurisdiction of such local board as aforesaid.	The mayor, aldermen, and burgesses acting by the council.	The borough fund or other property applicable to the purposes of a borough rate or the borough rate.	The town clerk.
Any town not included in the above descriptions and under the jurisdiction of commissioners, trustees, or other persons entrusted by any local Act with powers of improving, cleansing, or paving any town.	The commissioners, trustees, or other persons entrusted by the local Act with powers of improving, cleansing, or paving the town.	Any rate leviable by such commissioners, trustees, or other persons, or other funds applicable by them to the purposes of improving, cleansing, or paving the town.	The clerk of the commissioners or trustees or other persons or other officer performing the duties of clerk.
Places within the jurisdiction of local boards, constituted in pursuance of The Public Health Act, 1848, and The Local Government Act, 1858, or one of such Acts.	The local board . .	General district rate 11 & 12 Vict. c. 63, s. 87.	Clerk of the local board or other officer performing duties of clerk. 11 & 12 Vict. c. 63, s. 37.

Places to which Act applies.	Description of Local Authority.	Description of Local Rate.	Description of Clerk of Local Authority.
SCOTLAND.			
Burghs	The magistrates and town council.	The revenue of the burgh or the local rate leviable for prison purposes under 23 & 24 Vict. c. 105, or any other local rate leviable by the town council.	Town Clerk.
Places where police commissioners or trustees exercise the functions of police commissioners acting under "The General Police and Improvement (Scotland) Act," or trustees or commissioners acting under any general or local Act.	The police or other commissioners or trustees.	Property or rate belonging to or leviable by the commissioners or trustees.	Clerk of the commissioners or trustees or any other officer performing the duties of clerk.
IRELAND.			
The City of Dublin . .	The right honourable the lord mayor, aldermen, and burgesses acting by the council.	The borough fund or borough improvement rate.	The town clerk.
Towns corporate or boroughs (with the exception of the city of Dublin).	The mayor, aldermen, and burgesses acting by the council.	The borough fund, or town fund, or borough rate.	The town clerk.
Towns having town commissioners under 9 Geo. 4, c. 82, or 17 & 18 Vict. c. 103, or any Acts amending the same, or having commissioners or other governing body under any local Act.	The town commissioners or other governing body.	Any rate leviable by these bodies, or any fund belonging to them applicable in the whole or in part to the making or repairing of sewers within their jurisdictoin.	The clerk of the commissioners or other governing body.

Sched. 2.

SECOND SCHEDULE.

FORM MARKED A.

The Artizans and Labourers Dwellings Act, 1868.

County of parish of No.

Charging Order.

Insert Description of local authority.

The being the local authority under the above-mentioned Act, do, by this order under their hands and seal, charge the inheritance or fee of the premises mentioned in the schedule hereto, with the payment to of the sum of pounds, payable yearly on the day of for the term of years, and being in consideration of an expenditure of pounds incurred by him in respect of the said premises.

Insert description of premises charged.

SCHEDULE.

FORM MARKED B.

Form of Assignment of Charge.

To be endorsed on Charging Order.

Dated the day of

I, the within named , in pursuance of the Artizans and Labourers Dwellings Act, 1868, and in consideration of pounds this day paid to me, hereby assign to the within-mentioned charge.

(Signed)

THIRD SCHEDULE.

I. *Form of Order by Court of Quarter Sessions or Petty Sessions or Court of Burgh Magistrates in Scotland.*

Be it remembered, that on the day of 18 upon the report hereinafter mentioned, we, the undersigned justices, assembled at the court of quarter sessions holden in and for the county of , *or* assembled in

Sched. 3.

petty sessions for the division or district of the borough or county of , *or* members of the court of burgh magistrates for [*as the case may be*], do hereby order and determine that one or more house or houses or buildings situate in a certain court or alley within the borough or burgh, known or designated as court or alley [*or otherwise distinguishing the premises*], and specified in the report of the officer of health for the dated the day of 18 , is or are unfit for human habitation, and ought to be improved or demolished [*as the case may be*], in pursuance of "The Artizans and Labourers Dwellings Act, 1868."

II. *Form of Notice by Clerk of the Peace, Clerk of the Justices, or Clerk of the Court of Burgh Magistrates in Scotland to Clerk of Local Authority.*

Artizans and Labourers Dwellings Act, 1868.

I, *A.B.*, clerk of the peace *or* clerk of the justices [*or* clerk of the court of burgh magistrates] for the , do hereby certify, that on the day of 18 the justices assembled at the court of quarter sessions, *or* assembled at the petty sessions for the [*or* court of the burgh magistrates] [*as the case may be*], made an order, of which the following is a true copy:

[*Here give a copy of the Presentment, Form* I.]

As witness my hand, this day of in the year of our Lord 18 .

(Signed) (*A.B.*) clerk of the peace *or* clerk of the justices for .
[*or* clerk of the court of burgh magistrates].

To the clerk of the of

AN ACT

FOR FACILITATING THE IMPROVEMENT OF TH DWELLINGS OF THE WORKING CLASSES IN LARGE TOWNS (*a*).

38 & 39 VICT. CAP. 36.

29TH JUNE, 1875.

WHEREAS various portions of many cities and boroughs are so built, and the buildings thereon are so densely inhabited as to be highly injurious to the moral and physical welfare of the inhabitants :

And whereas there are in such portions of cities and boroughs as aforesaid a great number of houses, courts, and alleys which, by reason of the want of light, air, ventilation, or of proper conveniences, or from other causes, are unfit for human habitation, and fevers and diseases are constantly generated there, causing death and loss of health, not only in the courts and alleys but also in other parts of such cities and boroughs :

And whereas it often happens that owing to the above circumstances, and to the fact that such houses, courts, and alleys are the property of several owners, it is not in the power of any one owner to make such alterations as are necessary for the public health :

And whereas it is necessary for the public health that many of such houses, courts, and alleys should be pulled down, and such portions of the said cities and boroughs should be reconstructed :

And whereas in connexion with the reconstruction of those portions of such cities and boroughs it is expedient that provision be made for dwellings for the working class who may be displaced in consequence thereof :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

(*a*) See section 2 as to application of the Act to certain districts and places by name, and to others according to population. The Acts confirming the improvement schemes promoted by the Metropolitan Board of Works as the local authority of the metropolis (exclusive of the city of London and its liberties), on the 31st December, 1878, were the Metropolis (Whitechapel and Limehouse) Improvement Scheme Confirmation Act, 39 & 40 Vict. c. 200 ; Metropolis (Golden Lane, &c.) Improvement, &c. Act, 40 & 41 Vict. c. 100 ; Metropolis (Goulston Street, &c. Whitechapel) Improvement, &c. Act, 40 & 41 Vict. c. 103 ; Metropolis (Great Wild Street, &c.) Improvement, &c. Act, 40 & 41 Vict. c. 133 ; Metropolis (Bowman's Buildings, &c. Islington) Improvement, &c. Act, 41 & 42 Vict. c. 112. This Act was amended by the Artizans and Labourers Dwellings Improvement Act, 1879 (42 & 43 Vict. c. 63), which see *post*, p. 582.

Preliminary.

Short title.

1. This Act may be cited for all purposes as "The Artizans and Labourers Dwellings Improvement Act, 1875."

Application of Act to certain districts, and description of local authority (*b*).

2. This Act shall apply only to

(1.) The city of London ; and

(2.) The metropolis, exclusive of the city of London ; (*c*) and

(3.) Urban sanitary districts in England containing, according to the last published census, for the time being a population of twenty-five thousand and upwards ;

(4.) Urban sanitary districts in Ireland containing, according to the last published census, a population of twenty-five thousand and upwards ;

and the local authority shall be as follows ; that is to say,—

(1.) As respects the city of London, the commissioners of sewers ; and

(2.) As respects the metropolis, the metropolitan board of works ; and

(3.) As respects each urban sanitary district, the urban sanitary authority of that district.

PART I.

Unhealthy Areas.

1. *Scheme by Local Authority.*

Local authority on being satisfied by official representation of the unhealthiness of district to make scheme for its improvement.

3. Where an official representation as hereinafter mentioned (*d*) is made to the local authority (*e*) that any houses, courts, or alleys within a certain area under the jurisdiction of the local authority are unfit for human habitation, or that diseases indicating a generally low condition of health amongst the population have been from time to time prevalent in a certain area within the jurisdiction of the local authority, and that such prevalence may reasonably be attributed to the closeness, narrowness, and bad arrangement or the bad condition of the streets and houses or groups of houses within such area, or to the want of light, air, ventilation, or proper conveniences, or to any other sanitary defects, or to one or more of such causes, and that the evils connected with such houses, courts, or alleys, and the sanitary defects in such area, cannot be effectually remedied otherwise than by an improvement scheme for the re-arrangement and reconstruction of the streets and houses within such area, or of some of such streets or houses, the local authority shall take such repre-

(*b*) See provision in section 30 as to places in which local Acts are in force, providing for objects the same as or similar to the objects of this Act.

(*c*) Including the liberties thereof, see section 31.

(*d*) See section 4.

(*e*) As to who are the "local authority" see section 2, *supra*.

Section 3.

sentation into their consideration, and if satisfied of the truth thereof, and of the sufficiency of their resources, shall pass a resolution to the effect that such area is an unhealthy area, and that an improvement scheme ought to be made in respect of such area (*a*), and after passing such resolution they shall forthwith proceed to make a scheme for the improvement of such area (*b*).

Provided always, that no person being beneficially interested in any lands within such area shall vote as members of the local authority upon such resolution, or upon any question relating to the purchase or taking of lands in which he is so interested.

If any person votes in contravention of this proviso, he shall, on summary conviction, incur a penalty not exceeding twenty pounds; but the fact of his giving such vote shall not invalidate any resolution passed by the local authority.

Provided always, that any number of such areas may be included in one improvement scheme.

Official representation by whom to be made.

4. An official representation shall mean, in the metropolis, a representation made by the medical officer of health of any district board, or vestry, or by such medical officer as is hereafter in this Act mentioned, (*c*) to the local authority, and elsewhere shall mean a representation made to the local authority by the medical officer of health of such authority. A medical officer acting in pursuance of this Act shall make such representation whenever he sees cause to make the same; (*d*) and if two or more justices of the peace acting within the jurisdiction for which he is medical officer, or twelve or more persons liable to be rated to any rate out of the proceeds of which the expenses of the local authority under this Act are made payable, complain to him of the unhealthiness of any area within such jurisdiction, it shall be the duty of the officer forthwith to inspect such area, and to make an official representation stating the facts of the case, and whether in his opinion the area is an unhealthy area or not an unhealthy area, for the purposes of this Act (*e*).

Requisites of improvement scheme of local authority (*f*).

5. The improvement scheme of a local authority shall be accompanied by maps, particulars, and estimates; it may exclude any part of the area in respect of which an official representation is made, or include any neighbouring lands, if the local authority are of opinion that such exclusion is expedient or inclusion is necessary for making their scheme efficient for sanitary purposes; it may also provide for widening any existing approaches to the unhealthy area or otherwise for opening out the same for the purposes of ventilation or health; also it shall distinguish the lands proposed to be taken compulsorily, and shall provide for the accommodation of at the least as many persons of the working class as may be displaced in the area with

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(*a*) As to proceeding where local authority fail to pass a resolution in relation to an official representation, see section 8.

(*b*) As to requisite of improvement scheme, see section 5, and confirmation of scheme, section 6.

(*c*) See sections 13 and 14.

(*d*) See section 15, providing for inquiry where the medical officer fails to make representation, &c.

(*e*) As to penalties for obstructing medical officers of health or officers of the local or confirming authority, see section 29.

(*f*) That part of this section which requires accommodation for the working classes to be provided within the same area or its vicinity is amended by the 4th section of the Artizans and Labourers Dwellings Improvement Act, 1879, which see *post*.

Section 5.

respect to which the scheme is proposed, in suitable dwellings, which, unless there are any special reasons to the contrary, shall be situate within the limits of the same area, or in the vicinity thereof; it shall also provide for proper sanitary arrangements. It may also provide for such scheme or any part thereof being carried out and effected by the person entitled to the first estate of freehold in any property subject to the scheme or with the concurrence of such person, under the superintendence and control of the local authority, and upon such terms and conditions to be embodied in the scheme as may be agreed upon between the local authority and such person.

2. *Confirmation of Scheme.* (*g*)

Improvement scheme by provisional order to be confirmed by parliament

Publication of notices.

Service of notices. (*h*)

6. Upon the completion of an improvement scheme the local authority shall—

Publish, during three consecutive weeks in the month of September, or October, or November, in some one and the same newspaper circulating within the jurisdiction of the local authority, an advertisement stating the fact of a scheme having been made, the limits of the area to which the scheme relates, and naming a place within such area or in the vicinity thereof where a copy of the scheme may be seen at all reasonable hours; and,

During the month next following the month in which such advertisement is published serve a notice on every owner or reputed owner, lessee or reputed lessee, and occupier of any lands proposed to be taken compulsorily, so far as such persons can reasonably be ascertained, stating that such lands are proposed to be taken compulsorily for the purpose of an improvement scheme, and in the case of any owner or reputed owner, lessee or reputed lessee, requiring an answer stating whether the person so served dissents or not in respect of taking such lands, such notice to be served—

(*a.*) By delivery of the same personally to the person required to be served, or if such person is absent abroad, or cannot be found, to his agent, or if no agent can be found, then by leaving the same on the premises; or,

(*b.*) By leaving the same at the usual or last known place of abode of such person as aforesaid; or,

(*c.*) By forwarding the same by post in a prepaid letter addressed to the usual or last known place of abode of such person.

One notice addressed to the occupier or occupiers without naming him or them, and left at any house, shall be deemed to be a notice served on the occupier or on all the occupiers of any such house (*i*).

(*g*) The report of the board, dated the 31st December, 1877, presented to parliament, gives a detailed and succint narrative of the operations of the board under the Act, showing the number of official representations made to them by the medical officers of the metropolis, and the course adopted by the board with respect to each. The report sets forth their proceedings in execution of the Acts already obtained, with tabular statements showing in the case of each improvement the number of persons displaced, the number of persons for whom accommodation is provided by the respective schemes, the nature of such accommodation, and other particulars relating to the improvements in question.

(*h*) See section 27, empowering confirming authority to dispense with advertisements and notices in certain cases.

(*i*) See provision in section 11, requiring the local authority after the passing of the confirming Act, to give notice of their intention to take houses, by placards, handbills, &c., and as to the certificate of a justice.

Section 6.

Petition to secretary of state or local government board.

Upon compliance with the provisions contained in this section with respect to the publication of an advertisement and the service of notices, the local authority shall present a petition, if such authority be the commissioners of sewers or the metropolitan board of works to a secretary of state, and if such authority be an urban sanitary authority to the local government board, praying that an order may be made confirming such scheme. The petition shall be accompanied by a copy of the scheme, and shall state the names of the owners or reputed owners, lessees or reputed lessees, who have dissented in respect of the taking their lands, and shall be supported by such evidence as the secretary of state or local government board, according to the circumstances of the case (in this Act referred to as the confirming authority), may from time to time require :

If, on consideration of the petition and on proof of the publication of the proper advertisements and the service of the proper notices, the confirming authority think fit to proceed with the case, they shall direct a local inquiry (*a*) to be held in, or in the vicinity of, the area to which the scheme relates, for the purpose of ascertaining the correctness of the official representation made as to the area and the sufficiency of the scheme provided for its improvement, and any local objections to be made to such scheme :

After receiving the report made upon such inquiry, the confirming authority may make a provisional order declaring the limits of the area to which the scheme relates, and authorizing such scheme to be carried into execution. Such provisional order may be made either absolutely or with such conditions and modifications of the scheme as the confirming authority may think fit, so that no addition be made to the lands proposed in the scheme to be taken compulsorily, and it shall be the duty of the local authority to serve a copy of any provisional order so made in the manner and upon the persons in which and upon whom notices in respect of lands proposed to be taken compulsorily are required by this Act to be served, except tenants for a month or a less period than a month.

A provisional order made in pursuance of this section shall not be of any validity until and unless it has been confirmed by Act of parliament; and it shall be lawful for the confirming authority, as soon as conveniently may be, to obtain such confirmation, and any provisional order made in pursuance of this Act, when confirmed by parliament, with such modifications as may seem fit to parliament, shall be deemed to be a public general Act of parliament, and is in this Act referred to as the confirming Act.

The confirming authority may make such order as they think fit in favour of any person whose lands were proposed by the scheme to be taken compulsorily for the allowance of the reasonable costs, charges, and expenses properly incurred by him in opposing such scheme.

All costs, charges, and expenses incurred by the confirming authority in relation to any provisional order under this Act shall, to such amount as the confirming authority think proper to direct, and all costs, charges, and expenses of any person to such amount as may be allowed to him by the confirming authority in pursuance of the aforesaid power, shall be deemed to be an expense incurred by the local authority under this Act,(*b*) and shall be paid to the confirming

(*a*) See sections 16 and 17 as to proceedings where a local inquiry is directed.

(*b*) See section 21 as to separate account by local authority of receipt and expenditure under the Act, formation of "dwelling house improvement fund," definition of "local rates," borrowing powers, and audit.

Section 6.

authority and to such person respectively, in such manner and at such times and either in one sum or by instalments as the confirming authority may order, with power for the confirming authority to direct interest to be paid at such rate not exceeding five pounds in the hundred by the year as the confirming authority may determine, upon any sum for the time being due in respect of such costs, charges, and expenses as aforesaid.

Any order made by the confirming authority in pursuance of this section may be made a rule of one of Her Majesty's superior courts, and be enforced accordingly.

Costs to be awarded in certain cases.

7. Where any bill for confirming a provisional order authorizing an improvement scheme is referred to a committee of either house of parliament upon the petition of any person opposing such bill, the committee shall take into consideration the circumstances under which such opposition is made to the bill, and whether such opposition was or was not justified by such circumstances, and shall award costs accordingly to be paid by the promoters or the opponents of the bill as the committee may think just.

Any costs under this section may be taxed and recovered in the manner in which costs may be taxed and recovered under the Act of the session of the twenty-eighth and twenty-ninth years of the reign of Her present Majesty, chapter twenty-seven.

The decision of the majority of the members of the committee for the time being present and voting on any question under this section shall be deemed to be the decision of the committee.

Inquiry on refusal of local authority to make an improvement scheme.

8. Where an official representation is made to the local authority with a view to their passing a resolution in favour of an improvement scheme, and they fail to pass any resolution in relation to such representation, or pass a resolution to the effect that they will not proceed with such scheme, such local authority shall, as soon as possible, send a copy of the official representation, accompanied by their reasons for not acting upon it, to the confirming authority, and upon the receipt thereof, the confirming authority may direct a local inquiry to be held, and a report to be made to them with respect to the correctness of the official representation made to the local authority, and any matters connected therewith on which the confirming authority may desire to be informed.

3. *Execution of Scheme by Local Authority.*

Duty of local authority to carry scheme when confirmed, into execution.

9. When the confirming Act authorizing any improvement scheme of a local authority under this Act has been passed by parliament, it shall be the duty of that authority to take steps for purchasing the lands required for the scheme,(*c*) and otherwise for carrying the scheme into execution as soon as practicable. They may sell or let all or any part of the area to which such scheme relates to any pur-

(*c*) By 41 & 42 Vict. c. 42 (Commutation of Tithes), in cases where land charged with rent-charge in lieu of tithes is taken for, amongst other purposes, the carrying out of any improvements under this Act, the persons proposing to carry out the improvements shall, as soon as they are in possession of the land, and before it is applied to the purposes mentioned, apply to the Tithe Commissioners to order the redemption of the rent-charge for a sum of money equal to twenty-five times the amount thereof.

Section 9.

chasers or lessees for the purposes and under the condition that such purchasers or lessees will, as respects the land so purchased by or leased to them, carry the scheme into execution; and in particular they may insert in any grant or lease of any part of the area provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the buildings, and prohibiting the division of buildings, and any addition to or alteration of the character of buildings without the consent of the local authority, and for the re-vesting of the land in the local authority, or their re-entry thereon, on breach of any provision in the grant or lease. The local authority may also engage with any body of trustees, society or societies, persons or person, to carry the whole or any part of such scheme into effect upon such terms as the local authority may think expedient, but the local authority shall not themselves, without the express approval of the confirming authority, undertake the rebuilding of the houses or the execution of any part of the scheme, except that they may take down any or all of the buildings upon the area, and clear the whole or any part thereof, and may lay out, form, pave, sewer, and complete all such streets upon the land purchased by them as they may think fit, and all streets so laid out and completed shall thenceforth be public streets, repairable by the same authority as other streets in the district.

Provided that in any grant or lease of any part of the area which may be appropriated by the scheme for the erection of dwellings for the working classes, the local authority shall impose suitable conditions and restrictions as to the elevation, size, and design of the houses, and the extent of the accommodation to be afforded thereby, and shall make due provision for the maintenance of proper sanitary arrangements.

Provided also, that in any case in which the local authority erect any dwellings out of funds to be provided under this Act, they shall, unless the confirming authority shall otherwise determine, sell and dispose of all such dwellings within ten years from the time of the completion thereof.

The local authority may, where they think it expedient so to do, without themselves acquiring the land, or after or subject to their acquiring any part thereof, contract with the person entitled to the first estate of freehold in any land comprised in an improvement scheme for the carrying out of the scheme in respect of such land by such person.

Completion of scheme on failure by local authority.

10. If within five years after the removal of any buildings on the land set aside by any provisional order as sites for working men's dwellings the local authority have failed to sell or let such land for the purposes prescribed by the scheme, or have failed to make arrangements for the erection of the said dwellings, the confirming authority may order the said land to be sold by public auction or public tender, with full power to fix a reserve price, subject to the conditions imposed by the scheme, and to any modifications thereof which may be made in pursuance of this Act, and to a special condition on the part of the purchaser to erect upon the said land dwellings for the working classes, in accordance with plans to be approved by the local authority, and subject to such other reservations and regulations as the confirming authority may deem necessary.

Notice to occupiers by placards.

11. The local authority shall, not less than thirteen weeks before taking any fifteen houses or more, make known their intention to take the same by placards, handbills, or other general notices placed

Section 11.

in public view upon or within a reasonable distance of such houses, and the local authority shall not take any such houses until they have obtained a certificate of a justice of the peace that it has been proved to his satisfaction that the local authority have made known, in manner required by this section, their intention to take such houses.

Power of confirming authority to modify authorized scheme.

12. The confirming authority, on application from the local authority, and on its being proved to their satisfaction that an improvement can be made in the details of any scheme, and that due provision has been made or secured for the accommodation in suitable dwellings of as many persons of the working class as may be displaced in the area to which such scheme relates, either in manner provided by the scheme or in some other manner, or will be more advantageously made or secured under the proposed alteration, may permit the local authority to modify any part of an improvement scheme authorized by the confirming Act which it may appear inexpedient to carry into execution in accordance with such Act.

A statement of any modifications permitted to be made in any part of an improvement scheme in pursuance of this section shall be laid by the confirming authority before both houses of parliament as soon as practicable after they are made, if parliament be then sitting, and if not, within one month after the next meeting of parliament: provided always, that if such modification or alteration shall require a larger public expenditure than that sanctioned by the former scheme, or the taking of any property otherwise than by agreement, or shall affect injuriously other property in a manner different to that proposed in the former scheme without the consent of the owner and occupier of any such property, it must be made by provisional order to be confirmed by Act of parliament in the manner provided in section six of this Act on the completion of an improvement scheme.

PART II.

PROVISIONS ANCILLARY TO IMPROVEMENT SCHEME.

As to Local Authority.

1. *Medical Officer.*

Medical officer of health in metropolis.

13. The metropolitan board of works may, with the assent of a secretary of state, at any time appoint one or more legally qualified medical practitioner or practitioners, with such remuneration as they think fit, for the purpose of better carrying into effect this Act in the metropolis. Any officer so appointed by the metropolitan board of works shall be deemed to be a medical officer of health of a local authority within the meaning of this Act, and shall perform the duties and be subject to the liabilities which such medical officer is by this Act required to perform and be subject to.

Provision in case of absence of medical officer of health.

14. In case of the illness or unavoidable absence of the medical officer of health, the district board, vestry, or local authority, as the case may be, may (subject to the approval of the confirming authority) appoint a duly qualified medical practitioner, who shall for the period of six calendar months, or any less period to be named in the appointment, have and perform all the powers and duties of a medical officer of health under this Act.

Inquiry on default of medical officer in certain cases.

15. Where twelve or more ratepayers have complained to a medical officer of the unhealthiness of any area within the jurisdiction of such officer, and the medical officer has failed to inspect such area, or to make an official representation with respect thereto, or has made an official representation to the effect that in his opinion the area is not an unhealthy area, such ratepayers may appeal to the confirming authority, and, upon their giving security to the satisfaction of that authority for costs, the confirming authority shall appoint a medical officer to inspect such area and to make representation to the confirming authority, stating the facts of the case, and whether, in his opinion, the area is an unhealthy area or not an unhealthy area. The representation so made shall be transmitted by the confirming authority to the local authority, and if it state that the area is an unhealthy area the local authority shall proceed therein in the same manner as if it were an official representation made to that authority.

The confirming authority shall make such order as to the costs of the inquiry as they think just, with power to require the whole or any part of such costs to be paid by the appellants where the officer appointed is of opinion that the area is not an unhealthy area, and to declare the whole or any part of such costs to be payable by the local authority where such officer is of opinion that the area is an unhealthy area.

Any order made by the confirming authority in pursuance of this section may be made a rule of one of Her Majesty's superior courts, and be enforced accordingly.

2. Local inquiry.

Proceedings on local inquiry.

16. Where a local inquiry is directed, an officer shall be sent by the confirming authority to the area to which such inquiry relates for the purpose of making an inquiry into the correctness of the official representation made to the local authority as to such area being an unhealthy area, and into the sufficiency of the scheme provided for its improvement, and into any local objections to be made to such scheme.

Notice of inquiry to be publicly given.

17. Before commencing such inquiry the officer appointed to conduct the same shall make public by advertisement or otherwise in such manner as he thinks best calculated to give information to the persons residing in the area his intention to make such inquiry, and a statement of a time and place at which he will be prepared to hear all persons desirous of being heard before him upon the subject of the inquiry.

Power to administer oath.

18. The officer conducting such inquiry shall have power to administer an oath ; he shall report the result of the inquiry to the confirming authority, who shall deal with such report in such manner as they think expedient.

3. Acquisition of Land.

Acquisition of land (*a*).

19. (1.) The clauses of the Lands Clauses Consolidation Act, 1845, with respect to the purchase and taking of lands otherwise than by agreement shall not, except to the extent set forth in the schedule hereto, apply to any lands taken in pursuance of this Act, but save as aforesaid the said Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Act Amendment Act, 1860, as amended by the provisions contained in the schedule hereto, shall regulate and apply to the purchase and taking of lands in England, and shall for that purpose be deemed to form part of this Act in the same manner as if they were enacted in the body thereof ; and (2.) "The Lands Clauses Consolidation Act, 1845," as amended by "The Lands Clauses Consolidation Act, 1860," "The Railways Act (Ireland), 1851," "The Railways Act (Ireland) 1860," "The Railways Act (Ireland), 1864," and "The Railways Traverse Act," shall, subject to the provisions following, regulate and apply to the purchase and taking of lands in Ireland, and shall for this purpose be deemed to form part of this Act, in the same manner as if they were enacted in the body hereof,

Subject, as respects both England and Ireland, to the provisions following ; that is to say,

(1.) This Act shall authorize the taking by agreement any lands which the local authority may require for the purpose of carrying into effect the scheme authorized by any confirming Act, but it shall authorize the taking by the exercise of

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(*a*) By section 31 defined to include messuages, lands, tenements, and hereditaments of any tenure, and any right over land ; and see as to redemption of rentcharge on lands purchased, note to section 9, *supra*.

Section 19.

any compulsory powers of such lands only as are proposed by the scheme in the confirming Act to be taken compulsorily.

(2.) Whenever the compensation payable in respect of any lands or of any interest in any lands proposed to be taken compulsorily in pursuance of this Act requires to be assessed,(a) the estimate of the value of such lands or interests shall be based upon the fair market value, as estimated at the time of the valuation being made of such lands, and of the several interests in such lands, due regard being had to the nature and then condition of the property, and the probable duration of the buildings in their existing state, and to the state of repair thereof, and all circumstances affecting such value, without any additional allowance in respect of the compulsory purchase of an area or of any part of an area in respect of which an official representation has been made, or of any lands which in the opinion of the arbitrator have been included in a scheme as falling under the description of property named in the third section of this Act :

(3.) In the construction of the said Lands Clauses Consolidation Acts, and the provisions in the said schedule, this Act shall be deemed to be the special Act, and the local authority shall be deemed to be the promoters of the undertaking ; and the period after which the powers for the compulsory purchase or taking of lands shall not be exercised shall be three years after the passing of the confirming Act.

Extinction of rights of way and other easements.

20. Upon the purchase by the local authority of any lands required for the purpose of carrying into effect any scheme authorized by a confirming Act, all rights of way, rights of laying down or of continuing any pipes, sewers, or drains on, through, or under such lands, or part thereof, and all other rights or easements in or relating to such lands, or any part thereof, shall be extinguished, and all the soil of such ways, and the property in the pipes, sewers, or drains, shall vest in the local authority, subject to this provision that compensation shall be paid by the local authority to any persons or bodies of persons proved to have sustained loss by this section, and such compensation shall be determined in the manner in which compensation for lands is determinable under this Act, or as near thereto as circumstances admit.

4. Expenses.

Formation of improvement fund for purposes of this Act.

21. A separate account shall be kept by the local authority of their receipts and expenditure in respect of any transactions under this Act. Their receipts shall form a fund (in this Act referred to as "The Dwelling-house Improvement Fund"), and their expenditure shall be made out of such fund.

The moneys required in the first instance to establish such fund, and any deficiency for the purposes of this Act from time to time appearing in such fund by reason of the excess of expenditure over receipts, shall be supplied out of the local rates or out of moneys borrowed in pursuance of this Act.

In settling any accounts of the local authority in respect of any transactions under this Act, care shall be taken that as far as may

(a) See amendment of this provision by the third section of the Artizans and Labourers Dwellings Improvement Act, 1879 (*post*), authorizing the arbitrator to receive evidence that the property was in such a condition as to be a nuisance within the Acts relating to nuisances.

Section 21.

be practicable all expenditure shall ultimately be defrayed out of the property dealt with under this Act; and any balance of profit made by the local authority under this Act shall be applicable to any purposes to which the local rates are for the time being applicable.

The local rates shall, in the case of the commissioners of sewers, mean the sewer rate and the consolidated rate leviable by such commissioners, or either of such rates.

The metropolitan board of works shall levy as part of the metropolitan consolidated rate within the area of the metropolis, without making any demand on the city of London, a sufficient amount for the purposes of this Act, and the part so levied shall, for the purposes of this Act, in the case of the metropolitan board of works, be referred to and included under the expression "local rates."

The "local rates" shall in the case of an urban sanitary authority mean all or any rates or rate levied throughout the district of such authority, and out of which the local authority is authorized to pay any expenses incurred under the Sanitary Acts, as defined by the Public Health Act, 1872, and by the Public Health (Ireland) Act, 1874.

The local authority may carry to the account of the Dwelling-house Improvement Fund any moneys or the produce of any property, which moneys or produce are or is legally applicable to purposes similar to the purposes of this Act; and in case of doubt as to whether, in any particular case, the purposes are similar to the purposes of this Act, it shall be lawful for the confirming authority to decide such question, and such decision shall be conclusive.

Power of borrowing money for the purposes of the Act.

22. Any local authority under this Act may for the purposes of this Act borrow any moneys on the security of any lands, houses, or other property acquired by them under this Act, and may mortgage such lands, houses, or other property to any person advancing such moneys, and it shall not be in any way incumbent on the mortgagees to see to the application of such moneys, nor shall they be responsible for the misapplication thereof.

Every local authority borrowing on the credit of such lands, houses, or other property as aforesaid may pay out of local rates the interest of any moneys so borrowed by them.

Any local authority under this Act borrowing any moneys on the security of any lands, houses, or other property as aforesaid may execute such instruments by way of security, with such power of sale and other conditions as they think expedient.

An urban sanitary authority shall have the same power of borrowing on the credit of the local rates such sums of money as they may require for the purposes of this Act as they have under section forty of the Public Health Act, 1872, or under the Public Health (Ireland) Act, 1874, for sanitary purposes.

The commissioners of sewers may borrow and take up at interest such money on the credit of the local rates, or any of them, as they may require for the purposes of this Act and may mortgage any such rate or rates to the persons by or on behalf of whom such money is advanced for securing the repayment to them of the sums borrowed, with interest thereon, and for the purposes of any mortgages so made by the commissioners of sewers the clauses of the Commissioners Clauses Act, 1847, with respect to the mortgages to be executed by the commissioners shall be incorporated with this Act; and in the construction of that Act "the special Act" shall mean this Act; "the commissioners" shall mean the commissioners of sewers; "the clerk of the commissioners" shall include any officer appointed for the pur-

Section 22.

pose by the commissioners of sewers by this Act; and the mortgagees or assignees of any mortgage made as last aforesaid may enforce payment of the arrears of principal and interest due to them by the appointment of a receiver.

The metropolitan board of works may, with the assent of the treasury, create consolidated stock under the Metropolitan Board of Works (Loans) Act, 1869, for the purpose of raising such sums as they may require for the purposes of this Act, but there shall be repaid to the consolidated rate out of the local rate all moneys required for payment of the dividends on and the redemption of the consolidated stock created for the purposes of this Act.

The public works loans commissioners, or, in the case of Ireland, the commissioners of public works, acting with the consent of the treasury, may, on the recommendation of the confirming authority, lend to any local authority any money required by them for purposes of this Act, on the security, in the case of the metropolitan board of works, of consolidated stock created under the Metropolitan Board of Works (Loans) Act, 1869, and in any other case on the security of the local rates. Such loan shall be repaid within such period, not exceeding fifty years, as may be recommended by the confirming authority, and shall bear interest at the rate of three and a half per cent per annum, or such higher rate as may in the judgment of the treasury be necessary to enable the loan to be made without loss to the exchequer.

Any limit imposed on or in respect of local rates by any Act of parliament other than this Act shall not apply to any rate required to be levied for the purpose of defraying any expenses under this Act.

Audit of accounts.

23. The accounts of the commissioners of sewers and the accounts of the metropolitan board of works under this Act shall respectively be audited in the same manner and with the same power in the officers auditing the same in which the accounts of those bodies when acting in their capacities of commissioners of sewers and metropolitan board of works, are for the time being required to be audited by law (*a*).

The accounts of an urban sanitary authority under this Act shall be audited in the same manner and with the same power in the officers auditing the same in which the accounts of that authority in its character of sanitary authority are for the time being required to be audited by law.

(*a*) That is, pursuant to section 192, *et seq.*, of Metropolis Local Management Act, 1855, *ante*.

PART III.

General Provisions.

24. Any petition or document proceeding from a local authority may be authenticated by their seal where such authority have a seal, and in any other case by the signature of any two or more members of the local authority, or in such other manner as the confirming authority may require.

Provision where local authority has no seal.

Notices.

25. Any notice required to be served upon the local authority may be lawfully served by delivering the same to the clerk of the local authority, or leaving the same at his office with some person employed there by him.

Service of notice on the local authority.

26. The confirming authority may from time to time by order prescribe the forms of advertisements and notices under this Act; it shall not be obligatory on any persons to adopt such forms, but the same, when adopted, shall be deemed sufficient for all the purposes of this Act.

Power of confirming authority as to advertisements and notices.

27. The confirming authority may, on the consideration of any petition of a local authority for an order confirming a scheme, dispense with the publication of any advertisement, or the service of any notice, proof of which publication or service is not given to them as required by this Act, where reasonable cause is shown to their satisfaction why such publication or service should be dispensed with, and such dispensation may be made by the confirming authority, either unconditionally or upon such condition as to the publication of other advertisements and the service of other notices or otherwise as the confirming authority may think fit, due care being taken by the confirming authority to prevent the interest of any person being prejudiced by the fact of the publication of any advertisement or the service of any notice being dispensed with in pursuance of this section.

Power of confirming authority to dispense with notices in certain cases.

28. Any notice served by the local authority for the purposes of this Act may be signed by the clerk of the local authority.

Authentication of notices served by the local authority.

Penalties.

29. Where any person obstructs the officer of health or any officer of the local or confirming authority acting in the performance of anything which the local or confirming authority are by this Act required or authorized to do, every person so offending shall, on summary conviction, for every such offence forfeit a sum not exceeding twenty pounds.

Penalty for obstructing officers in execution of Act.

Saving Clauses.

30. Where in any place to which this Act applies, any local Act is in force providing for objects the same as or similar to the objects of

Relation of local Acts to general Acts.

Section 30.

this Act (*a*), the enactments of such local Act may be enforced at the discretion of the local authority either instead of or in concurrence with this Act; provided that the local authority of any place to which this Act applies shall not, by reason of any local Act within its jurisdiction, be exempted from the performance of any duty or obligation to which such authority are subject under this Act.

Definitions.

Definitions of terms of Act.

31. The expressions hereinafter mentioned shall respectively have the meanings hereby assigned to them, unless there is something in the context inconsistent with such meanings; that is to say,

"Secretary of state." "Secretary of state" means one of Her Majesty's principal secretaries of state:

"Person." "Person" shall include a body of persons, corporate or unincorporate:

"Lands." "Lands" shall include messuages, lands, tenenements, hereditaments of any tenure, and any right over land:

"The city of London." "The city of London" shall include the liberties thereof:

"The Metropolis." "The metropolis" shall not include the city of London or the liberties thereof, but shall include all other parishes or places within the jurisdiction of the metropolitan board of works:

"A district board or vestry." "A district board or vestry" within the metropolis means a district board or vestry as incorporated by the Metropolis Management Act, 1855:

"Medical officer of health," "Medical officer of health" shall, in the case of Ireland, mean consulting sanitary officer:

"Local Government Board." "Local government board" shall, in the case of Ireland, mean Local Government Board of Ireland:

"Clerk of local authority." "Clerk of local authority" shall, in the case of Ireland, mean executive sanitary officer and acting clerk:

"Superior courts." "Superior courts" shall mean, in the case of Ireland, Her Majesty's superior courts in Ireland:

"The treasury." "The treasury" shall mean the lords commissioners of the treasury, or any two of them:

"This Act." "This Act" includes any confirming Act as hereinbefore defined.

SCHEDULE. (*b*)

Provisions with respect to the purchase and taking of lands in England otherwise than by agreement, and otherwise amending the Lands Clauses Act, 1845.

Deposit of Maps and Plans.

(1.) The local authority shall as soon as practicable after the passing of the confirming Act cause to be made out, and to be

(*a*) By section 31 the expression "this Act," is defined to include any confirming Act.

(*b*) By the Artizans and Labourers Dwellings Improvement Act, 1879, section 2 (*post*), this schedule is to be construed as if the schedule to that Act formed part thereof.

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signed by their clerk or some other principal officer appointed by them, maps and schedules of all lands proposed to be taken compulsorily (which lands are hereinafter referred to as the scheduled lands), together with the names, so far as the same can be reasonably ascertained, of all persons interested in such lands as owners or reputed owners, lessees, or reputed lessees, or occupiers.

(2.) The maps made by the local authority shall be upon such scale and be framed in such manner as may be prescribed by the confirming authority.

(3.) The local authority shall deposit such maps and schedules at the office of the confirming authority, and shall deposit and keep copies of such maps and schedules at the office of the local authority.

Appointment of Arbitrator.

(4.) After such deposit at the office of the confirming authority as aforesaid, it shall be lawful for the confirming authority, upon the application of the local authority, to appoint an arbitrator between the local authority and the persons interested in such of the scheduled lands, or lands injuriously affected by the execution of such scheme, so far as compensation for the same has not been made the subject of agreement.

Proceedings on Arbitration.

(5.) Before any arbitrator enters upon any inquiry he shall, in the presence of a justice of the peace, make and subscribe the following declaration; that is to say,

"I, *A.B.*, do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Artizans and Labourers Dwellings Improvement Act, 1875.

"*A. B.*

"Made and subscribed in the presence of ."

And such declaration shall be annexed to the award when made; and if any arbitrator, having made such declaration, wilfully act contrary thereto, he shall be guilty of a misdemeanor.

(6.) As soon as an arbitrator has been appointed as aforesaid, the confirming authority shall deliver to him the maps and schedules deposited at their office, and the local authority shall publish once in each of three successive weeks the following particulars:—

(*a.*) The appointment of the arbitrator:

(*b.*) The deposit at the office of the local authority of the copies of such maps and schedules as aforesaid, with a description of the situation of such office, and a statement of the time at which such copies may be inspected by any person desirous of inspecting the same:

(*c.*) A requisition directing the owners of or parties by this Act enabled to sell and convey or release any of the said scheduled lands, or any lands injuriously affected by the execution of the scheme of the local authority or any interest in such lands, to deliver to the arbitrator, on or

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before a day fixed by the arbitrator and named in such requisition (and being a day not earlier than twenty-one days from the date of the insertion of the last of such notices), a short statement in writing of the nature of their respective claims.

(7.) The arbitrator shall, after the expiration of the period within which such claims are required to be delivered to him as aforesaid, and so far as such claims may not be settled by agreement, proceed to inquire into and adjudicate according to the basis provided in this Act upon the compensation to be paid in respect of the scheduled lands, and of the several interests in such lands, and the compensation to be made for injury to any lands as are mentioned in his appointment injuriously affected by the execution of the scheme of the local authority.

(8.) The arbitrator shall, after due inquiry and examination, frame a provisional award, setting forth the compensation to be paid by the local authority in respect of the several interests in the said scheduled lands, and also, where any inquiry relates to injury to any lands injuriously affected by the execution of the scheme of the local authority, the compensation payable in respect of such injury.

(9.) The provisional award shall be deposited at the office of the confirming authority, and a copy shall be deposited at the office of the local authority.

(10.) The arbitrator shall cause notice of such award to be given to all persons entitled to compensation under the same, or who have made a claim before such arbitrator as claimants for compensation; the arbitrator shall cause notice to be published once in each of three successive weeks, stating that a copy of the provisional award has been deposited at the office of the local authority, and he shall in the notice of the award given to such persons as aforesaid, and also in the published notice, appoint a time and place, or times and places, for holding a meeting or meetings to hear objections against such provisional award (the first such meeting to be not earlier than twenty-one days after the last day of publication of the said notice).

(11.) The arbitrator shall hold such meeting or meetings according to such notices, and thereat hear and determine any objections which may then and there be made to such provisional award by any person interested therein, or adjourn the further hearing thereof, if the arbitrator see fit, to a future meeting, and may take any measures which he may deem proper for ascertaining the compensation payable in respect of any such lands or interests as aforesaid, or the justice or propriety or any other matter of such provisional award, and may from time to time, if he see occasion, appoint and hold further meetings for hearing and determining objections to such provisional award, of which further meetings, when not holden by adjournment, notice shall be given in manner hereinbefore directed.

(12.) When the arbitrator has heard and determined all such objections, and made such inquiries as he may think necessary in relation thereto, and made such alterations (if any) as he may deem proper in the provisional award, he shall confirm such award under his hand and seal accordingly; and thereupon such award shall be final, and be binding

and conclusive (subject to the provisions concerning an appeal hereinafter contained) upon all persons whomsoever, and no such award shall be set aside for irregularity in matter of form.

(13.) Such final award as aforesaid shall be deposited at the office of the confirming authority, and a copy thereof shall be deposited at the office of the local authority, and the local authority shall thereupon publish once in each of three successive weeks notice of the deposit having been made at the office of the local authority of a copy of the award so confirmed, and a further notice requiring all persons claiming to have any right to or interest in the lands (the compensation to be paid in respect of which is ascertained by such award) to deliver to the local authority, on or before a day to be named in such notice (such day not being earlier than twenty-one days from the date of the last publication of the notice), a short statement in writing of the nature of such claim, and a short abstract of the title on which the same is founded; and such statement and abstract shall be paid for by the local authority. Such abstract of title, in the case of a person claiming a fee simple interest in the land, shall commence twenty years previous to the date of the claim, except there has been an absolute conveyance on sale within twenty years, and more than ten years, previous to the claim when the abstract shall commence with such conveyance.

Payment of Purchase Money.

(14.) Within thirty days from the delivery of such statement and abstract as aforesaid to the local authority, the local authority shall, where it appears to them that any person so claiming is absolutely entitled to the lands, estate, or interest claimed by him, deliver to such person on demand, a certificate stating the amount of the compensation to which he is entitled under the said award.

(15.) Every such certificate shall be prepared by and at the costs of the local authority; and where any agreement has been entered into as to the compensation payable in respect of the interest of any person in any lands, the local authority may, where it appears to them that such person is absolutely entitled, deliver to such person a like certificate.

(16.) The local authority shall, thirty days after demand, pay to the party to whom any such certificate is given, or otherwise as herein provided in the cases hereinafter mentioned, the amount of moneys specified to be payable by such certificate to the party to whom or in whose favour such certificate is given, his or her executors, administrators, or assigns.

(17.) If the local authority wilfully make default in such payment as aforesaid, then the party named in such certificate shall be entitled to enter up judgment against the local authority in any of Her Majesty's superior courts of law at Westminster, or in any court to which the jurisdiction of such courts may be transferred (*a*), for the amount of the

(*a*) Now, under Supreme Court of Judicature Act, 1873, to one of the divisions of the High Court of Justice.

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sums specified in such certificate, in the same manner in all respects as if he had been, by warrant of attorney from the local authority, authorized to enter up judgment for the amount mentioned in the certificate, with costs, as is usual in like cases; and all moneys payable under such certificates, or to be recovered by such judgments as aforesaid, shall at law and in equity be taken as personal estate as from the time of the local authority entering on any such lands as aforesaid.

(18.) When and so soon as the local authority have paid to the party to whom any such certificate as aforesaid is given, or otherwise, as herein provided, in the cases hereinafter mentioned, the amount specified to be payable by such certificate to the party to whom or in whose favour the certificate is given, his executors, administrators, or assigns, it shall be lawful for the local authority, upon obtaining such receipt as hereinafter mentioned, from time to time to enter upon any lands in respect of which such certificate is given, and thenceforth to hold the same for the estate or interest in respect of which the amount specified in such certificate was payable.

(19.) In every case in which any moneys are paid by any local authority under this Act, for such compensation as aforesaid, the party receiving such moneys shall give to the local authority a receipt for the same, and such receipt shall have the effect of a grant, release, and conveyance of all the estate and interest of such party, and of all parties claiming under or through him, in the lands in respect of which such monies are paid, provided such receipt has an *ad valorem* stamp of the same amount impressed thereon in respect of the purchase moneys mentioned in such certificate as would have been necessary if such receipt had been an actual conveyance of such estate or interest, every such receipt to be prepared by and at the costs of the local authority.

(20.) If it appear to the local authority, from any such statement and abstract as aforesaid, or otherwise, that the party making any such claim as aforesaid is not absolutely entitled to the lands, estate, or interest in respect of which his claim is made, or is under any disability, or if the title to such lands, estate, or interest be not satisfactorily deduced to the local authority, then and in every such case the amount to be paid by the local authority in respect of such lands, estate, or interest as aforesaid shall be paid and applied as provided by the clauses of the Lands Clauses Consolidation Act, 1845, as amended by the Court of Chancery Funds Act, 1872, "with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title."

(21.) Where any person claiming any right or interest in any lands refuses to produce his title to the same, or where the local authority have under the provisions of this Act taken possession of any lands in respect of the compensation whereof, or of any estate or interest wherein, no claim has been made within one year from the time of the local authority taking possession, or if any party to whom any such certificate has been given or tendered refuses to receive such certificate, or to accept the amount therein specified

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as payable to him, then and in any such case the amount payable by the local authority in respect of such lands, estate, or interest, or the amount specified in such certificate, shall be paid into the Bank of England, in manner provided by the last-mentioned clauses of the Lands Clauses Consolidation Act, 1845, as amended by the Court of Chancery Funds Act, 1872, and the amount so paid into the said bank shall be accordingly dealt with as by the said Act provided.

(22.) Nothing herein contained shall prevent the local authority from requiring any further abstract or evidence of title respecting any lands included in any such award as aforesaid, in addition to the abstract or statement hereinbefore mentioned, if they think fit, so as the same be obtained at the cost of the local authority.

(23) If from any reason whatever the local authority does not deliver the certificate aforesaid to any party claiming to be entitled to any interest in any lands the possession whereof has been taken by the local authority as aforesaid, then the right to have a certificate according to the provisions of this Act may, at the costs and charges of the local authority, be enforced by any party or parties, by application to the high court of chancery, or any court to which the jurisdiction of the high court of chancery may be transferred, in a summary way by petition, and all other rights and interests of any party or parties arising under the provisions of this Act may be in like manner enforced against the local authority by such application as aforesaid.

Entry on Lands on making Deposit.

(24.) Where the local authority are desirous, for the purposes of their works, of entering upon any lands before they would be entitled to enter thereon under the provisions hereinbefore contained, it shall be lawful for the local authority, at any time, after the arbitrator has framed his provisional award, upon depositing in the Bank of England such sum as the arbitrator may certify to be in his opinion the proper amount to be so deposited in respect of any lands authorized to be purchased or taken by the local authority, and mentioned in such provisional award, to enter upon and use such lands for the purposes of the improvement scheme of the local authority; and the arbitrator shall, upon the request of the local authority, at any time after he has framed such provisional award, certify under his hand the sum which, in his opinion, should be so deposited by the local authority in respect of any lands mentioned in such provisional award before they enter upon and use the same as aforesaid, and the sum to be so certified shall be the sum or the amount of the several sums set forth in such provisional award as the sum or sums to be paid by the local authority in respect of such lands, or such greater amount as to the arbitrator, under the circumstances of the case, may seem proper; and, notwithstanding such entry as aforesaid, all proceedings for and in relation to the completion of the award, the delivery of certificates, and other proceedings under this Act, shall be had, and payments

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made, as if such entry and deposit had not been made; provided that the local authority shall, where they enter upon any lands by virtue of this present provision, pay interest at the rate of five pounds per centum per annum upon the compensation money payable by them in respect of any lands so entered upon, from the time of their entry until the time of the payment of such money and interest to the party entitled thereto, or where, under the provisions of this Act, such compensation is required to be paid into the said bank, then until the same, with such interest, is paid into such bank accordingly; and where under this provision interest is payable on any compensation money the certificate to be delivered by the local authority in respect thereof shall specify that interest is so payable, and the same shall be recoverable in like manner as the principal money mentioned in such certificate.

(25.) The money so deposited as last aforesaid shall be paid into the Bank of England to such account as may from time to time be directed by any regulation or Act for the time being in force in relation to moneys deposited in the bank in similar cases, or to such account as may be directed by any order of the court of chancery, or of any court to whom the powers of the court of chancery may be transferred, and remain in the bank by way of security to the parties interested in the lands which have been so entered upon, for the payment of the money to become payable by the local authority in respect thereof under the award of the arbitrator; and the money so deposited may, on the application by petition of the local authority, be ordered to be invested in bank annuities or government securities, and accumulated; and upon such payment as aforesaid by the local authority it shall be lawful for the court of chancery, or any other court to which the jurisdiction of the court of chancery may be transferred, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the local authority, or, in default of such payment as aforesaid by the local authority, it shall be lawful for the said court to order the same to be applied in such manner as it thinks fit for the benefit of the parties for whose security the same shall so have been deposited.

Appeal.

(26.) Where the party named in any certificate issued under the provisions hereinbefore contained of the amount of the compensation ascertained by any award under this Act (or any party claiming under the party so named) is dissatisfied with the amount in such certificate certified to be payable, and such amount exceeds five hundred pounds, and

Where any party claiming any interest in any moneys so paid into court as aforesaid is dissatisfied with the amount of the price or compensation in respect of which such moneys are paid into court, and such amount exceeds five hundred pounds, also

Where the local authority is dissatisfied with the amount of compensation which the arbitrator appointed under the pro-

visions of this Act has awarded to be paid by the local authority to any person in respect of any estate or interest in lands, and such amount exceed the sum of five hundred pounds;

The party dissatisfied may submit the question of the proper amount of compensation to a jury, provided that such party give notice in writing to the other party of their intention to appeal within ten days after the cause of appeal has arisen.

The cause of appeal shall be deemed to have arisen,—

(1.) Where a certificate has been issued as aforesaid, at the date of the issue of the certificate:

(2.) Where moneys have been paid into court, at the date of the payment into court:

(3.) Where the local authority appeals, at the date of the making of the final award.

(27.) Where a notice has been given under this Act of an appeal to a jury in respect of compensation for land, or any interest in land, a question of disputed compensation required to be determined by the verdict of a jury shall be deemed to have arisen within the meaning of the Lands Clauses Consolidation Act, 1845, and all the provisions of that Act contained in sections thirty-eight to fifty-seven, both inclusive, shall be deemed to apply, except sections forty-seven and fifty-one (*a*): Provided also, that,—

(1.) Where the local authority appeals, that authority shall be deemed to be the plaintiff, and the party entitled to compensation to be the defendant; and

(2.) Where the party claiming compensation appeals, then, in case the verdict of the jury is for a sum exceeding the award of the arbitrator, the local authority shall pay to such party the costs of the trial, such costs to be taxed and ascertained in the same manner as costs are by law ascertained on the trial of issues tried in the court of Queen's Bench, or any court to which the jurisdiction of the court of Queen's Bench may be transferred (*b*); but in case the verdict of the jury is for a sum not exceeding the award of the arbitrator, the party appealing shall pay to the local authority the costs of the trial to be taxed and ascertained in manner aforesaid.

(3.) Where the local authority is the appellant,—

(1.) Notwithstanding the verdict of the jury may be for a sum less than that awarded by the arbitrator, the local authority shall pay to the other party such sum not exceeding twenty pounds for the costs of the trial as the sheriff or other officer before whom the same is tried shall direct; and,

(2.) In case the verdict of the jury is for a sum equal to or exceeding the award of the arbitrator, the local authority shall pay to the other party the costs of the trial, such costs to be taxed and ascertained in manner aforesaid.

(*a*) Section 47 relates to the failure of the party claiming compensation to appear at the time appointed for the inquiry, and section 51 directs how the costs of the inquiry are to be borne.

(*b*) Now, under Supreme Court of Judicature Act, 1873, to a division of the high court of justice.

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(4.) The amount of compensation awarded by the arbitrator shall not be communicated to the jury, but they shall be required to make an independent assessment of the amount of compensation to which the party claiming compensation is entitled.

Costs of Arbitration.

(28.) The salary or remuneration, travelling and other expenses of the arbitrator, and all costs charges, and expenses (if any) which may be incurred by the confirming authority in carrying the provisions of this Act into execution, shall be paid by the local authority; and the amount of such costs, charges, and expenses shall from time to time be certified by the confirming authority after first hearing any objections that may be made to the reasonableness of any such costs, charges, and expenses by or on behalf of the local authority; and every certificate of the said confirming authority certifying the amount of such costs, charges, and expenses, thall be taken as proof in all proceedings at law or in equity of the amount of such respective costs, charges, and expenses, and the amount so certified shall be a debt due from the local authority to the crown, and shall be recoverable accordingly. Further, any such certificate may be made a rule of one of the superior courts of law on the application of any party named therein, and may be enforced accordingly.

(29.) It shall be lawful for the arbitrator, where he thinks fit, upon the request of any party by whom any claim has been made before him, to certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the local authority; and if within seven days after demand the amount so certified be not paid to the party entitled to receive the same, such amount shall be recoverable as a debt from such local authority, with interest at the rate of five per cent. for any time during which the same remains unpaid after such seven days as aforesaid, but no such certificate shall be given where the arbitrator has awarded the same or a less sum than has been offered by the local authority in respect of such claim before the appointment of the arbitrator.

Miscellaneous.

(30.) The arbitrator may call for the production of any documents in the possession or power of the local authority, or of any party making any claim under the provisions of this Act, which such arbitrator may think necessary for determining any question or matter to be determined by him under this Act, and may examine any such party and his witnesses, and the witnesses for the local authority, on oath, and administer the oaths necessary for that purpose.

(31.) If any arbitrator appointed in pursuance of this Act die, or refuse, decline, or become incapable to act, the confirming authority may appoint an arbitrator in his place, who shall have the same powers and authorities as the arbitrator first appointed; and upon the appointment of any arbitrator in

the place of an arbitrator dying, or refusing, declining, or becoming incapable to act, all the documents relating to the matter of the arbitration which were in the possession of such arbitrator shall be delivered to the arbitrator appointed in his place, and the local authority shall publish notice of such appointment in the London Gazette.

(32.) All notices required by this schedule to be published shall be published in some one and the same newspaper circulating within the jurisdiction of the local authority, and where no other form of service is prescribed all notices required to be served or given by the local authority under this schedule or otherwise upon any persons interested in or entitled to sell lands, shall be served in manner in which notice of lands proposed to be taken compulsorily for the purpose of an improvement scheme are directed by this Act to be served upon owners or reputed owners, lessees or reputed lessees, and occupiers.

AN ACT

TO AMEND THE ARTIZANS AND LABOURERS DWELLINGS IMPROVEMENT ACT, 1875.

42 & 43 VICT. CAP. 63.

15TH AUGUST, 1879.

BE it enacted by the Queen's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :

Short title and construction of Act. 38 & 39 Vict. c. 36.

1. This Act may be cited as the "Artizans and Labourers Dwellings Improvement Act, 1879."

This Act shall be construed as one with the Artizans and Labourers Dwellings Improvement Act, 1875, (in this Act referred to as the principal Act,) and the principal Act and this Act may be cited together as the Artizans and Labourers Dwellings Improvement Acts, 1875 and 1879.

Amendment of schedule to principal Act.

2. The schedule to the principal Act shall be construed as if the schedule to this Act formed part thereof.

As to assessment of compensation.(*a*)

3. On the occasion of assessing the compensation payable under any improvement scheme in respect of any house or premises situate within an unhealthy area, evidence shall be receivable by the arbitrator to prove that at the date of the confirming Act authorizing such scheme, or at some previous date not earlier than the date of the official representation in which the scheme originated, such house or premises was by reason of its unhealthy state, or by reason of overcrowding or otherwise, in such a condition as to have been a nuisance within the meaning of the Acts relating to nuisances ; (*b*) and if the arbitrator is satisfied that from either of such causes as aforesaid, such house or premises was, at such dates as aforesaid or either of them, a nuisance as aforesaid, he shall then determine what would have been the value of such house or premises supposing the nuisance to have been abated, and what would have been the expense of abating the nuisance ; and the amount of compensation payable in respect of such house or premises shall be an amount equal to the estimated value of the house or premises after the nuisance was abated, and after deducting the estimated expense of abating the nuisance.

(*a*) This amends the 19th section, sub-sect. 2, as to the estimate of value.
(*b*) See definition of these Acts, section 5, *infra*.

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Amendment of 38 & 39 Vict. c. 36, s. 5, as to the provision of accommodation for the working classes.

4. Whereas by the fifth section of the principal Act it is provided, amongst other things, that an improvement scheme of a local authority shall provide for the accommodation of at least as many persons of the working classes as may be displaced in the area with respect to which the scheme is proposed in suitable dwellings which, unless there are special reasons to the contrary, shall be situate within the limits of the same area or in the vicinity thereof:

And whereas it not unfrequently happens that, having due regard to the requirements of persons of the working classes displaced by an improvement scheme, equally convenient accommodation at a much less cost can be furnished to such persons or some of them at some place other than within the area or the immediate vicinity of the area from which they have been displaced: Be it enacted that—

Where it is proved to the satisfaction of the confirming authority on an application to authorize or modify an improvement scheme that equally convenient accommodation can be provided for any persons of the working classes displaced by an improvement scheme at some place other than within the area or the immediate vicinity of the area comprised in the improvement scheme, and it is also proved to the satisfaction of such authority that the required accommodation has been or is about to be forthwith provided, it shall be lawful for the confirming authority accordingly to authorize any such improvement scheme, or to permit a modification of any such scheme, and the requirements of the principal Act with respect to providing accommodation for persons of the working class shall, to the extent to which accommodation is provided in accordance with this section, be deemed to have been complied with.

A local authority may for purpose of providing accommodation for persons of the working classes displaced by any improvement scheme, appropriate any lands for the time being belonging to them which are suitable for the purpose, or may purchase by agreement any such further lands as may be convenient.

Definition of "Acts relating to nuisances." 41 & 42 Vict. c. 52. 38 & 39 Vict. c. 55. 29 & 30 Vict. c. 41. 38 & 39 Vict. c. 55.

5. The Acts relating to nuisances mean—

as respects any place in Ireland, the Public Health (Ireland) Act, 1878, and any local Act which contains any provisions with respect to nuisances in that place; and

as respects the metropolis, as defined by the Public Health Act, 1875, the Nuisances Removal Acts as defined by the Sanitary Act, 1866, or any Act amending the same, and any local Act which contains any provisions with respect to nuisances in that place; and

as respects any other place in England, the Public Health Act, 1875, and any local Act which contains any provisions with respect to nuisances in that place.

SCHEDULE.

Notice of appointment of arbitrator.

1. The publication by the local authority of the appointment of the arbitrator, and the other particulars mentioned in article six of the schedule to the principal Act, shall be made not only by advertisement, but also by placards and handbills affixed in conspicuous

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places on or near the lands to be taken, and also by leaving a notice thereof at each house proposed to be taken, and also by sending a notice thereof by post to the persons interested in such lands as owners or reputed owners, lessees or reputed lessees, so far as they can be reasonably ascertained.

Power of arbitrator as to apportionment.

2. The arbitrator shall have the same power of apportioning any rent-service, rentcharge, chief or other rent, payment, or incumbrance, or any rent payable in respect of lands comprised in a lease, as two justices have under the Lands Clauses Consolidation Act, 1845.

Amendment respecting severance of properties. 8 & 9 Vict. c. 18.

3. Notwithstanding anything in section ninety-two of the Lands Clauses Consolidation Act, 1845, the arbitrator may determine that such part of any house, building, or manufactory as is proposed to be taken by the local authority can be taken without material damage to such house, building, or manufactory, and if he so determine may award compensation in respect of the severance of the part so proposed to be taken, in addition to the value of that part, and thereupon the party interested shall be required to sell and convey to the local authority such part, without the local authority being obliged to purchase the greater part or the whole of such house, building, or manufactory.

The local authority, or any person interested, if dissatisfied with a determination under this enactment, may, in manner provided by article twenty-six of the schedule to the principal Act, submit the question of whether the said part can be taken without material damage, as well as the question of the proper amount of compensation, to a jury ; and the notice of intention to appeal shall be given within the same time as notice of intention to appeal against the amount of compensation awarded is required to be given.

Omitted interests.

4. The amount of purchase money or compensation to be paid in pursuance of section one hundred and twenty-four of the Lands Clauses Consolidation Act, 1845, in respect of any estate, right, or interest in or charge affecting any of the scheduled lands which the local authority have through mistake or inadvertance failed or omitted duly to purchase or make compensation for, shall be awarded by the arbitrator and be paid, in like manner, as near as may be, as the same would have been awarded and paid if the claim of such estate, right, interest, or charge had been delivered to the arbitrator before the day fixed for the delivery of statements of claims ; with this qualification, that the first award of the arbitrator shall be final, and not provisional.

If the arbitrator is satisfied that the failure or omission to purchase the said estate, right, interest, or charge arose from any default on the part either of the claimant or of the local authority, he may direct the costs to be paid by the party so in default.

AN ACT

TO REPEAL THE ADULTERATION OF FOOD ACTS AND TO MAKE BETTER PROVISION FOR THE SALE OF FOOD AND DRUGS IN A PURE STATE.(a)

38 & 39 VICT. CAP. 63.

11TH AUGUST, 1875.

WHEREAS it is desirable that the Acts now in force relating to the adulteration of food should be repealed, and that the law regarding the sale of food and drugs in a pure and genuine condition should be amended :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

Repeal of statutes.

1. From the commencement of this Act the statutes of the twenty-third and twenty-fourth of Victoria, chapter eighty-four, of the thirty-first and thirty-second of Victoria, chapter one hundred and twenty-one, section twenty-four, of the thirty-third and thirty-fourth of Victoria, chapter twenty-six, section three, and of the thirty-fifth and thirty-sixth of Victoria, chapter seventy-four, shall be repealed, except in regard to any appointment made under them and not then determined, and in regard to any offence committed against them or any prosecution or other act commenced and not concluded or completed, and any payment of money then due in respect of any provision thereof.

Interpretation of words.

2. The term "food" shall include every article used for food or drink by man, other than drugs or water :

The term "drug" shall include medicine for internal or external use :

The term "county" shall include every county, riding, and division, as well as every county of a city or town not being a borough :

The term "justices" shall include any police and stipendiary magistrate invested with the powers of a justice of the peace in England, and any divisional justices in Ireland.

(a) This Act was amended by 42 and 43 Vict. c. 30, which refers to this Act as the *principal* Act. See the amending Act, *post*.

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Description of Offences.

Prohibition of the mixing of injurious ingredients, and of selling the same.

3. No person shall mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any article of food (*a*) with any ingredient or material so as to render the article injurious to health (*b*), with intent that the same may be sold in that state, and no person shall sell any such article so mixed, coloured, stained, or powdered, under a penalty in each case not exceeding fifty pounds for the first offence; every offence, after a conviction for a first offence, shall be a misdemeanor, for which the person, on conviction, shall be imprisoned for a period not exceeding six months with hard labour.

Prohibition of the mixing of drugs with injurious ingredients, and of selling the same.

4. No person shall, except for the purpose of compounding as hereinafter described, (*c*) mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any drug with any ingredient or material so as to affect injuriously the quality or potency of such drug, with intent that the same may be sold in that state, and no person shall sell any such drug so mixed, coloured, stained, or powdered, under the same penalty in each case respectively as in the preceding section for a first and subsequent offence.

Exemption in case of proof of absence of knowledge.

5. Provided that no person shall be liable to be convicted under either of the two last foregoing sections of this Act in respect of the sale of any article of food, or of any drug, if he shows to the satisfaction of the justice or court before whom he is charged that he did not know (*d*) of the article of food or drug sold by him being so mixed, coloured, stained, or powdered as in either of those sections mentioned, and that he could not with reasonable diligence have obtained that knowledge.

Prohibition of the sale of articles of food and of drugs not of the proper nature, substance, and quality.

6. No person shall sell to the prejudice of the purchaser (*e*) any article of food or any drug which is not of the nature, substance, and

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(*a*) Including "every article used for food or drink by man other than drugs or water," section 2, *ante*.

(*b*) It is a common law misdemeanor to sell unwholesome victuals; *R.* v. *Haynes*, 4 M. & S. 220, and *R.* v. *Southerton*, 6 East. 133; Lord *Ellenborough* referred to *R.* v. *M'Carty*, 2 L. Raymond, 1179; and see *R.* v. *Foster*, 46 L. J. M. C. 128.

(*c*) This seems to refer to section 6, sub-section (3), and section 7, but these contain no directions as to compounding drugs or other articles.

(*d*) The necessity of showing that the act was done knowingly is confined to the prohibitions in the 3rd and 4th sections, and does not apply to that in the 6th.

(*e*) The vexed question whether a sale to a public officer for the purpose of analysis was a sale to the prejudice of the purchaser within this enactment, has been set at rest by the Sale of Food and Drugs Amendment Act, 1879 (*post*). But before that Act it had already been decided that such a sale was a contravention of the Act; and where an inspector, appointed under section 13, purchased for analysis an article of food, and took the proceedings prescribed by this Act, and it was proved that the article was not of the nature, substance, and quality of the article demanded, but an inferior article, though not known by him to be so at the time of the purchase; held, that this was a "sale to the prejudice of the purchaser"

quality (*f*) of the article demanded by such purchaser (*g*), under a penalty not exceeding twenty pounds: provided that an offence shall

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within this section. The case of *Davidson* v. *McLeod*, referred to in note (*g*) below, was dissented from. *Hoyle* v. *Hitchman*, 48 L. J. M. C. 97.

By the Sale of Food and Drugs Act Amendment Act, 1879, *post*, section 2, it is enacted that "In any prosecution under the provisions of the principal Act for selling to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, it shall be no defence to any such prosecution to allege that the purchaser, having bought only for analysis, was not prejudiced by such sale."

(*f*) By the Sale of Food and Drugs Act Amendment Act, 1879, *post*, section 2, it is enacted that "it shall not be a good defence to prove that the article of food or drug in question, though defective in nature, or in substance, or in quality, was not defective in all three respects."

(*g*) It was not necessary under the repealed Act 35 & 36 Vict. c. 74, that any proof should be given of the knowledge of the adulteration, and where the defendant sold as unadulterated an article which was in fact adulterated, without having declared the admixture to the purchaser in conformity with section 3, he was held liable to conviction; *Fitzpatrick* v. *Kelly*, 37 J. P. 373. See *Mullins* v. *Collins*, 22 W. R. 297, and *Roberts* v. *Egerton*, 43 L. J. M. C. 135.

In a case in which gin was diluted with water, and the magistrate found that the quantity of water was in excess of what could properly be added, the conviction was affirmed; *Webb* v. *Knight*, 41 J. P. 388; L. R. 2 Q. B. D. 530. Where the appellant sold gin adulterated with 44 per cent. of water, and the justices found as a fact that the dilution was excessive, a conviction was sustained for selling an article not of the nature, substance, and quality demanded; *Pashler* v. *Stevenill*, 41 J. P. (C. A.) 136.

By the Sale of Food and Drugs Act Amendment Act, 1879, *post*, section 6, it is enacted that "In determining whether an offence has been committed under section 6 of the principal Act, by selling to the prejudice of the purchaser, spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than twenty-five degrees under proof for brandy, whisky, or rum, or thirty-five degrees under proof for gin."

In the case of *Davidson* v. *McLeod*, before the high court of justiciary at Edinburgh, referred to in the J. P., January, 1878, on appeal against a conviction by the sheriff in Glasgow for selling, to a city inspector of health, cream in which the per centage of fatty matter was greatly below the standard of cream as sold in that city, it was held that to sustain the conviction, the article must be different in all three respects, viz., nature, substance, and quality, that these words could not be disjoined, and that the very nature of the substance must be altered; and secondly, that it was not and could not be alleged that the purchase was to the prejudice of the purchaser, as the power of compulsory purchase given to a public officer was given with a view to prosecutions under sections 3 and 5 only, and the conviction was quashed; *dissentientibus* Lords *Craighill* and *Adam*. This decision was dissented from in *Hoyle* v. *Hitchman*, cited in note (*e*) to section 6, *ante*; and see now Sale of Food and Drugs Act Amendment Act, 1879, section 2, *post*.

Where the seller brings to the purchaser's knowledge the fact that the article sold is not of the nature, &c., of the article he demands, the sale is not to his prejudice within section 6, though the seller puts no label on the bottle containing the article as directed by the 8th section of the Act, as it is not intended that the mode pointed out by that section should be the only method of bringing home knowledge to the purchaser; *Sandys* v. *Small*, L. R. 3 Q. B. D. 449. See article on this Act in the Justice of the Peace, vol. 42, July 6, 1878.

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not be deemed to be committed under this section in the following cases; that is to say, (*a*)

(1.) Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality thereof.

(2.) Where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent;

(3.) Where the food or drug is compounded as in this Act mentioned; (*b*)

(4.) Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation.

Provision for the sale of compounded articles of food and compounded drugs.

7. No person shall sell any compound article of food or compounded drug which is not composed of ingredients in accordance with the demand of the purchaser, under a penalty not exceeding twenty pounds.

Protection from offences by giving of label.

8. Provided that no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently to increase its bulk, weight, or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice, by a label (*c*) distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed.

Prohibition of the abstraction of any part of an article

9. No person shall, with the intent that the same may be sold in its altered state without notice, abstract from an article of food any part of it so as to affect injuriously its quality, substance, or nature, and no person shall sell any article so altered without making dis-

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Under the Adulteration of Seeds Act, 32 & 33 Vict. c. 112, s. 3, subjecting to a penalty any person who adulterates seed, it was held to be no offence to use sulphur to make old sound seed appear new seed, so long as the seed was not made to appear of a different species; *Francis* v. *Maas*, L. R. 3 Q. B. D. 341. See now the Act to amend the Adulteration of Seeds Act, 1878, enacting that under section 2 of Adulteration of Seeds Act, 1869, the term "to dye seeds" shall mean "to apply to seeds any process of colouring, dyeing, or sulphur smoking."

Under the 6 & 7 Will. 4, c. 37, s. 8, prohibiting the use of any other than certain specified ingredients in making bread for sale, there must have been guilty knowledge; *Core* v. *James*, L. R. 7 Q. B. 135.

(*a*) See *Roberts* v. *Egerton*, 43 L. J. M. C. 135.

(*b*) See note (*c*) to section 4, *ante*.

(*c*) It is not intended that the mode pointed out by this section should be the only mode of bringing home knowledge to the purchaser. See *Sandys* v. *Small*, L. R. 3 Q. B. D. 449, cited in note (*g*), *supra*.

Under the repealed statute 35 & 36 Vict. c. 74, the seller was not required to disclose the substance, &c., of the materials contained in the admixture, and where a grocer sold a packet of mustard and told the purchaser he did not sell it as pure mustard, and pointed to a label containing a notification to that effect, he was held not liable to be convicted; *Pope* v. *Searle*, 43 L. J. M. C. 129.

closure of the alteration, under a penalty in each case not exceeding twenty pounds.

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of food before sale, and selling without notice.

Appointment and Duties of Analysts, and Proceedings to obtain Analysis.

Appointment of analysts.

10. In the city of London and the liberties thereof the commissioners of sewers of the city of London and the liberties thereof, and in all other parts of the metropolis the vestries and district boards acting in execution of the Act for the better local management of the metropolis, the court of quarter sessions of every county, and the town council of every borough having a separate court of quarter sessions, or having under any general or local Act of parliament or otherwise a separate police establishment, may, as soon as convenient after the passing of this Act, where no appointment has been hitherto made, and in all cases as and when vacancies in the office occur, or when required so to do by the local government board, shall, for their respective city, districts, counties, or boroughs, appoint one or more persons possessing competent knowledge, skill, and experience, as analysts of all articles of food and drugs sold within the said city, metropolitan districts, counties, or boroughs, and shall pay to such analysts such remuneration as shall be mutually agreed upon, and may remove him or them as they shall deem proper; but such appointments and removals shall at all times be subject to the approval of the local government board, who may require satisfactory proof of competency to be supplied to them, and may give their approval absolutely or with modifications as to the period of the appointment and removal, or otherwise: Provided, that no person shall hereafter be appointed an analyst for any place under this section who shall be engaged directly or indirectly in any trade or business connected with the sale of food or drugs in such place.

In Scotland the like powers shall be conferred and the like duties shall be imposed upon the commissioners of supply at their ordinary meetings for counties, and the commissioners or boards of police, or where there are no such commissioners or boards, upon the town councils for boroughs within their several jurisdictions; provided that one of Her Majesty's principal secretaries of state in Scotland shall be substituted for the local government board of England.

In Ireland the like powers and duties shall be conferred and imposed respectively upon the grand jury of every county and town council of every borough; provided that the local government board of Ireland shall be substituted for the local government board of England.

Town council of a borough may engage the analyst of another borough or of the county.

11. The town council of any borough may agree that the analyst appointed by any neighbouring borough or for the county in which the borough is situated, shall act for their borough during such time as the said council shall think proper, and shall make due provision for the payment of his remuneration, and if such analyst shall consent, he shall during such time be the analyst for such borough for the purposes of this Act.

Power to purchaser of an article of

12. Any purchaser of an article of food or of a drug in any place being a district, county, city, or borough where there is any analyst appointed under this or any Act hereby repealed shall be entitled, on payment to such analyst of a sum not exceeding ten shillings and sixpence, or if there be no such analyst then acting for such place, to

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food to have it analysed.

the analyst of another place, of such sum as may be agreed upon between such person and the analyst, to have such article analysed by such analyst, and to receive from him a certificate of the result of his analysis.

Officer named to obtain a sample of food or drug to submit to analyst.

13. Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of this Act, may procure any sample of food or drugs, and if he suspect the same to have been sold to him contrary to any provision of this Act, shall submit the same to be analysed by the analyst of the district or place for which he acts, or if there be no such analyst then acting for such place to the analyst of another place, and such analyst shall, upon receiving payment as is provided in the last section, with all convenient speed analyse the same and give a certificate to such officer, wherein he shall specify the result of the analysis.

Provision for dealing with the sample when purchased.

14. The person purchasing any article with the intention of submitting the same to analysis shall, after the purchase shall have been completed, forthwith notify (*a*) to the seller or his agent selling the article his intention to have the same analysed by the public analyst, and shall offer to divide the article into three parts to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, proceed accordingly, and shall deliver one of the parts to the seller or his agent.

He shall afterwards retain one of the said parts for future comparison and submit the third part, if he deems it right to have the article analysed, to the analyst.

Provision when sample is not divided.

15. If the seller or his agent do not accept the offer of the purchaser to divide the article purchased in his presence, the analyst receiving the article for analysis shall divide the same into two parts, and shall seal or fasten up one of those parts and shall cause it to be delivered, either upon receipt of the sample or when he supplies his certificate to the purchaser, who shall retain the same for production in case proceedings shall afterwards be taken in the matter.

Provision for sending article to the analyst through the post-office.

16. If the analyst do not reside within two miles of the residence of the person requiring the article to be analysed, such article may be forwarded to the analyst through the post office as a registered letter, subject to any regulations (*b*) which the postmaster-general may make in reference to the carrying and delivery of such article, and the charge for the postage of such article shall be deemed one of the charges of this Act or of the prosecution, as the case may be.

Person refusing to sell

17. If any such officer, inspector, or constable, as above described, shall apply to purchase any article of food or any drug exposed to

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(*a*) The notification required by this section is a condition precedent to a prosecution, and in a case in which it was omitted, the conviction was quashed; *Barnes* v. *Chipp*, L. R. 3 Ex. D. 176.

(*b*) See Local Government Board's Circular, dated 20th September, 1875, respecting the transmission and analysis in disputed cases under this Act, with regulations issued by the postmaster-general, 6th September, 1875, for the transmission by post, of samples for analysis.

sale, or on sale by retail on any premises or in any shop or stores (*c*), and shall tender the price for the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer, inspector, or constable, such person shall be liable to a penalty not exceeding ten pounds.

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any article to any officer liable to penalty.

18. The certificate of the analysis shall be in the form set forth in the schedule hereto, or to the like effect.

Form of the certificate. (*d*)

19. Every analyst appointed under any Act hereby repealed or this Act shall report quarterly to the authority appointing him the number of articles analysed by him under this Act during the foregoing quarter, and shall specify the result of each analysis and the sum paid to him in respect thereof, and such report shall be presented at the next meeting of the authority appointing such analyst, and every such authority shall annually transmit to the local government board, at such time and in such form as the board shall direct, a certified copy of such quarterly report.

Quarterly report of the analyst.

Proceedings against Offenders.

20. When the analyst having analysed any article shall have given his certificate of the result, from which it may appear that an offence against some one of the provisions of this Act has been committed, the person causing the analysis to be made may take proceedings for the recovery of the penalty herein imposed for such offence, before any justices in petty sessions assembled having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser, in a summary manner.

Proceedings against offenders. (*e*)

Every penalty imposed by this Act shall be recovered in England in the manner prescribed by the eleventh and twelfth of Victoria, chapter forty-three. In Ireland such penalties and proceedings shall be recoverable, and may be taken with respect to the police district of Dublin metropolis, subject and according to the provisions of any Act regulating the powers and duties of justices of the peace for such district, or of the police of such district; and with respect to other parts of Ireland, before a justice or justices of the peace sitting in petty sessions, subject and according to the provisions of "The

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(*c*) By the Sale of Food and Drugs Act Amendment Act, 1879, *post*, section 3, an officer, inspector, or constable may obtain a sample of milk at the *place of delivery* to submit to analysis; section 4 imposes a penalty for refusal; and by section 5 any street or open place of public resort shall be held to come within the meaning of this section.

(*d*) See directions at foot of the statutory form of certificate, as to what matters the analyst has a discretion, and those which he is bound to notice in his observations.

(*e*) By the Sale of Food and Drugs Act Amendment Act, 1879, *post*, section 10, "The summons to appear before the magistrates shall be served upon the person charged with violating the provisions of the principal Act within a reasonable time, and in the case of a perishable article not exceeding twenty-eight days from the time of the purchase from such person for test purposes of the food or drug, and the summons shall not be made returnable in a less time than seven days from the day it is served upon the person summoned."

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Petty Sessions (Ireland) Act, 1851," and any Act amending the same.

Every penalty herein imposed may be reduced or mitigated according to the judgment of the justices.

Certificate of analyst *primâ facie* evidence for the prosecution, but analyst to be called if required.

Defendant and his wife may be examined.

21. At the hearing of the information in such proceeding the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness, and the parts of the articles retained by the person who purchased the article shall be produced, and the defendant may, if he think fit, tender himself and his wife to be examined on his behalf, and he or she shall, if he so desire, be examined accordingly.

Power to justices to have articles of food and drug analysed.

22. The justices before whom any complaint may be made, or the court before whom any appeal may be heard, under this Act may, upon the request of either party, in their discretion cause any article of food or drug to be sent to the commissioners of inland revenue, who shall thereupon direct the chemical officers of their department at Somerset House to make the analysis, and give a certificate to such justices of the result of the analysis; and the expense of such analysis shall be paid by the complainant or the defendant as the justices may by order direct.

Appeal to quarter sessions.

23. Any person who has been convicted of any offence punishable by any Act hereby repealed or by this Act by any justices may appeal in England to the next general or quarter sessions of the peace which shall be held for the city, county, town, or place wherein such conviction shall have been made, provided that such person enter into a recognizance within three days next after such conviction, with two sufficient sureties, conditioned to try such appeal, and to be forthcoming to abide the judgment and determination of the court at such general or quarter sessions, and to pay such costs as shall be by such court awarded; and the justices before whom such conviction shall be had are hereby empowered and required to take such recognizance; and the court at such general or quarter sessions are hereby required to hear and determine the matter of such appeal, and may award such costs to the party appealing or appealed against as they or he shall think proper.

In Ireland any person who has been convicted of any offence punishable by this Act may appeal to the next court of quarter sessions to be held in the same division of the county where the conviction shall be made by any justice or justices in any petty sessions district, or to the recorder at his next sessions where the conviction shall be made by the divisional justices in the police district of Dublin metropolis, or to the recorder of any corporate or borough town when the conviction shall be made by any justice or justices in such corporate or borough town (unless when any such sessions shall commence within ten days from the date of any such conviction, in which case, if the appellant sees fit, the appeal may be made to the next succeeding sessions to be held for such division or town), and it shall be lawful for such court of quarter sessions or recorder (as the case may be) to decide such appeal, if made in such form and manner and such notices as are required by the said petty sessions Acts respectively herein-before mentioned as to appeals against orders made by justices at petty sessions, and all the provisions of the said petty sessions Acts respectively as to making appeals and as to

executing the orders made on appeal, or the original orders where the appeals shall not be duly prosecuted, shall also apply to any appeal made under this Act. Section 23.

In any prosecution defendant to prove that he is protected by exception or provision.

24. In any prosecution under this Act, where the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon any exception or provision contained in this Act, it shall be incumbent upon him to prove the same.

Defendant to be discharged if he prove that he bought the article in the same state as sold, and with a warranty.

No costs except on issues proved against him.

25. If the defendant in any prosecution under this Act prove to the satisfaction of the justices or court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty to that effect,(*a*) that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence.

Application of penalties.

26. Every penalty imposed and recovered under this Act shall be paid in the case of a prosecution by any officer, inspector, or constable of the authority who shall have appointed an analyst or agreed to the acting of an analyst within their district, to such officer, inspector, or constable, and shall be by him paid to the authority for whom he acts, and be applied towards the expenses of executing this Act, any statute to the contrary notwithstanding; but in the case of any other prosecution the same shall be paid and applied in England according to the law regulating the application of penalties for offences punishable in a summary manner, and in Ireland in the manner directed by the Fines Act, Ireland, 1851, and the Acts amending the same.

Punishment for forging certificate or warranty;

27. Any person who shall forge, or shall utter, knowing it to be forged for the purposes of this Act, any certificate or any writing purporting to contain a warranty, shall be guilty of a misdemeanor, and be punishable on conviction by imprisonment for a term of not exceeding two years with hard labour;

for wilful misapplication of warranty;

Every person who shall wilfully apply to an article of food, or a drug, in any proceedings under this Act, a certificate or warranty given in relation to any other article or drug, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds;

for false warranty;

Every person who shall give a false warranty in writing to any purchaser in respect of an article of food or a drug sold by him as principal or agent, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds;

for false label.

And every person who shall wilfully give a label with any article sold by him which shall falsely describe the article sold, shall be

(*a*) In a prosecution for selling lard adulterated with 15 per cent. of water, it was held that an invoice was not a written warranty within this enactment so as to discharge the defendant: *Rook* v. *Hopley*, L. R. 3 Ex. D. 209.

Section 27. guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds.

Proceedings by indictment and contracts not to be affected.(a)

28. Nothing in this Act contained shall affect the power of proceeding by indictment, or take away any other remedy against any offender under this Act, or in any way interfere with contracts and bargains between individuals, and the rights and remedies belonging thereto.

Provided that in any action brought by any person for a breach of contract on the sale of any article of food or of any drug, such person may recover alone or in addition to any other damages recoverable by him the amount of any penalty in which he may have been convicted under this Act, together with the costs paid by him upon such conviction and those incurred by him in and about his defence thereto, if he prove that the article or drug the subject of such conviction was sold to him as and for an article or drug of the same nature, substance, and quality as that which was demanded of him, and that he purchased it not knowing it to be otherwise, and afterwards sold it in the same state in which he purchased it; the defendant in such action being nevertheless at liberty to prove that the conviction was wrongful, or that the amount of costs awarded or claimed was unreasonable.

Expenses of executing the Act.

Expenses of executing Act.

29. The expenses of executing this Act shall be borne, in the city of London and the liberties thereof, by the consolidated rates raised by the commissioners of sewers of the city of London and the liberties thereof, and in the rest of the metropolis by any rates or funds applicable to the purposes of the Act for the better local management of the metropolis, and otherwise as regards England, in counties by the county rate, and in boroughs by the borough fund or rate; (b)

and as regards Ireland, in counties by the grand jury cess, and in boroughs by the borough fund or rate; all such expenses payable in any county out of grand jury cess shall be paid by the treasurer of such county; and

The grand jury of any such county shall, at any assizes at which it is proved that any such expenses have been incurred or paid without previous application to presentment sessions, present to be raised off and paid by such county the moneys required to defray the same.

(a) See note (b) to section 3, *ante*.

(b) By the Sale of Food and Drugs Act Amendment Act, 1879, *post*, section 8: "The town council of any borough having a separate court of quarter sessions shall be exempt from contributing towards the expenses incurred in the execution of the principal Act in respect of the county within which such borough is situate, and the treasurer of the county shall exclude the expenses so incurred from the account required by section one hundred and seventeen of the Municipal Corporation Act, 1835, to be sent by him to such town council; section 9 provides for boroughs with separate police establishments.

Special Provision as to Tea. Section 30.

Tea to be examined by the customs on importation.

30. From and after the first day of January one thousand eight hundred and seventy-six all tea imported as merchandize into and landed at any port in Great Britain or Ireland shall be subject to examination by persons to be appointed by the commissioners of customs, subject to the approval of the treasury, for the inspection and analysis thereof, for which purpose samples may, when deemed necessary by such inspectors, be taken and with all convenient speed be examined by the analysts to be so appointed; and if upon such analysis the same shall be found to be mixed with other substances or exhausted tea, (*c*) the same shall not be delivered unless with the sanction of the said commissioners, and on such terms and conditions as they shall see fit to direct, either for home consumption or for use as ships' stores or for exportation; but if on such inspection and analysis it shall appear that such tea is in the opinion of the analyst unfit for human food, (*d*) the same shall be forfeited and destroyed or otherwise disposed of in such manner as the said commissioners may direct.

Interpretation of Act.

31. Tea to which the term "exhausted" is applied in this Act shall mean and include any tea which has been deprived of its proper quality, strength, or virtue by steeping, infusion, decoction, or other means.

Provision for the liberty of a cinque port. (*e*)

32. For the purposes of this Act every liberty of a cinque port not comprised within the jurisdiction of a borough shall be part of the county in which it is situated, and subject to the jurisdiction of the justices of such county.

Application of the Act to Scotland.

33. In the application of this Act to Scotland the following provisions shall have effect:

1. The term "misdemeanor" shall mean "a crime or offence:"
2. The term "defendant" shall mean "defender" and include "respondent:"
3. The term "information" shall include "complaint:"
4. This Act shall be read and construed as if for the term "justices," wherever it occurs therein, the term "sheriff" were substituted:
5. The term "sheriff" shall include "sheriff substitute:"
6. The term "borough" shall mean any royal burgh and any burgh returning or contributing to return a member to Parliament:

(*c*) See interpretation of term "exhausted" in next section.

(*d*) See as to adulteration of tea, *R.* v. *Foster*, 46 L. J. M. C. 128; *Roberts* v. *Egerton*, 43 L. J. M. C. 135; L. R. 9 Q. B. 494, 499, which was a conviction under the 35 & 36 Vict. c. 74, ss. 2 and 3, on the ground that in the case of a simple commodity like tea, the mode by which it was coloured was an adulteration, and this adulteration, though known to the trade, being unknown to the public, the tea must be taken to be sold as unadulterated.

(*e*) By section 7 of the Food and Drugs Act Amendment Act, 1879, *post*, "every liberty having a separate court of quarter sessions, except a liberty of a cinque port, shall be deemed to be a county within the meaning of this Act."

Section 33.

7. The expenses of executing this Act shall be borne in Scotland, in counties by the county general assessment, and in burghs by the police assessment:

8. This Act shall be read and construed as if for the expression "the local government board," wherever it occurs therein, the expression "one of Her Majesty's principal secretaries of state" were substituted:

9. All penalties provided by this Act to be recovered in a summary manner shall be recovered before the sheriff of the county in the sheriff court, or at the option of the person seeking to recover the same in the police court, in any place where a sheriff officiates as a police magistrate under the provisions of "The Summary Procedure Act, 1864," or of the police Act in force for the time in any place in which a sheriff officiates as aforesaid, and all the jurisdiction, powers, and authorities necessary for this purpose are hereby conferred on sheriffs:

Every such penalty may be recovered at the instance of the procurator fiscal of the jurisdiction, or of the person who caused the analysis to be made from which it appeared that an offence had been committed against some one of the provisions of this Act:

Every penalty imposed and recovered under this Act shall be paid to the clerk of court, and by him shall be accounted for and paid to the treasurer of the county general assessment, or the police assessment of the burgh, as the sheriff shall direct:

10. Every penalty imposed by this Act may be reduced or mitigated according to the judgment of the sheriff:

11. It shall be competent to any person aggrieved by any conviction by a sheriff in any summary proceeding under this Act to appeal against the same to the next circuit court, or where there are no circuit courts to the high court of justiciary at Edinburgh, in the manner prescribed by such of the provisions of the Act of the twentieth year of the reign of King George the Second, chapter forty-three, and any Acts amending the same, as relate to appeals in matters criminal, and by and under the rules, limitations, conditions, and restrictions contained in the said provisions.

Interpretation of terms in application of Act to Ireland.

34. In the application of this Act to Ireland,—

The term "borough" shall mean any borough subject to the Act of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, intituled "An Act for the regulation of Municipal Corporations in Ireland:"

The term "county" shall include a county of a city and a county of a town not being a borough:

The term "assizes" shall, with respect to the county of Dublin, mean "presenting term:"

The term "treasurer of the county" shall include any person or persons or bank in any county performing duties analogous to those of the treasurer of the county in counties, and, with respect to the county of Dublin, it shall mean the finance committee:

The term "police constable" shall mean, with respect to the police district of Dublin metropolis, constable of the Dublin metropolitan police, and with respect to any other part of Ireland, constable of the royal Irish constabulary. Section 34.

35. This Act shall commence on the first day of October one thousand eight hundred and seventy-five. Commencement of the Act.

36. This Act may be cited as "The Sale of Food and Drugs Act, 1875." Title of the Act.

SCHEDULE.

FORM OF CERTIFICATE.

To (*a*)

I, the undersigned, public analyst for the , do hereby certify that I received on the day of , 18 , from (*b*) , a sample of for analysis (which then weighed (*c*)), and have analysed the same, and declare the result of my analysis to be as follows:—

I am of opinion that the same is a sample of genuine

or,

I am of opinion that the said sample contained the parts as under or the per-centages of foreign ingredients as under.

Observations (d).

As witness my hand this day of

A.B.,

at

(*a*) Here insert the name of the person submitting the article for analysis.

(*b*) Here insert the name of the person delivering the sample.

(*c*) When the article cannot be conveniently weighed, this passage may be erased, or the blank may be left unfilled.

(*d*) Here the analyst may insert at his discretion his opinion as to whether the mixture (if any) was for the purpose of rendering the article portable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether in excess of what is ordinary, or otherwise, and whether the ingredients or materials mixed are or are not injurious to health.

In the case of a certificate regarding milk, butter, or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

AN ACT

TO AMEND THE SALE OF FOOD AND DRUGS ACT, 1875.

42 & 43 VICT. CAP. 30.

21ST JULY, 1879.

38 & 39 Vict. c. 63.

WHEREAS conflicting decisions have been given in England and in Scotland (*a*) in regard to the meaning and effect of section six of the Sale of Food and Drugs Act, 1875, in this Act referred to as the principal Act, and it is expedient, in this respect and otherwise, to amend the said Act: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as the Sale of Food and Drugs Act Amendment Act, 1879.

In sale of adulterated articles no defence to allege purchase for analysis.

2. In any prosecution under the provisions of the principal Act (*b*) for selling to the prejudice of the purchaser any article of food or any drug, which is not of the nature, substance, and quality of the article demanded by such purchaser, it shall be no defence to any such prosecution to allege that the purchaser, having bought only for analysis, was not prejudiced by such sale. Neither shall it be a good defence to prove that the article of food or drug in question, though defective in nature or in substance or in quality, was not defective in all three respects.

Officer, inspector, or constable may obtain a sample of milk at the place of delivery to submit to analyst.

3. Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of this Act, may procure at the place of delivery (*c*) any sample of any milk in course of delivery to the purchaser or consignee in pursuance of any contract for the sale to such purchaser or consignee of such milk; and such officer, inspector, or constable, if he suspect the same to have been sold contrary to any of the provisions of the principal Act, shall submit the same to be analysed, and the same shall be analysed, and proceedings shall be taken, and penalties on conviction be enforced in like manner in all respects as if such officer, inspector, or constable had purchased the same from the seller or consignor under section thirteen of the principal Act.

(*a*) This apparently refers to the case of *Davidson* v. *McLeod* before the high court of justiciary at Edinburgh, cited in note (*g*), p. 587, *ante*.

(*b*) That is under section 6.

(*c*) This and the following section get rid of the restriction as to the place of sale in section 17 of the principal Act.

Section 4.

4. The seller or consignor or any person or persons entrusted by him for the time being with the charge of such milk, if he shall refuse to allow such officer, inspector, or constable to take the quantity which such officer, inspector, or constable shall require for the purpose of analysis, shall be liable to a penalty not exceeding ten pounds. Penalty for refusal to give milk for analysis.

5. Any street or open place of public resort shall be held to come within the meaning of section seventeen of the principal Act. Extension of Act as to sale in streets, &c.

6. In determining whether an offence has been committed under section six of the said Act by selling, to the prejudice of the purchaser, spirits not adulterated otherwise than by the admixture of water (*d*), it shall be a good defence to prove that such admixture has not reduced the spirit to more than twenty-five degrees under proof for brandy, whisky, or rum, or thirty-five degrees under proof for gin. Reduction allowed to the extent of 25 degrees under proof for brandy, whisky, or rum, and 35 degrees for gin.

7. Every liberty having a separate court of quarter sessions, except a liberty of a cinque port, shall be deemed to be a county within the meaning of the said Act. Extension of meaning of "county."

8. The town council of any borough having a separate court of quarter sessions shall be exempt from contributing towards the expenses incurred in the execution of the principal Act in respect of the county within which such borough is situate, and the treasurer of the county shall exclude the expenses so incurred from the account required by section one hundred and seventeen of the Municipal Corporation Act, 1835, to be sent by him to such town council. Quarter sessions boroughs not to contribute to county analyst. 5 & 6 Will. 4, c. 76.

9. The town council of any borough having under any general or local Act of parliament, or otherwise, a separate police establishment, and being liable to be assessed to the county rate of the county within which the borough is situate, shall be paid by the justices of such county the proportionate amount contributed towards the expenses incurred by the county in the execution of the principal Act by the several parishes and parts of parishes within such borough in respect of the rateable value of the property assessable therein, as ascertained by the valuation lists for the time being in force. Provision for boroughs with separate police.

10. In all prosecutions under the principal Act, and notwithstanding the provisions of section twenty of the said Act, the summons to appear before the magistrates shall be served upon the person charged with violating the provisions of the said Act within a reasonable time, and in the case of a perishable article not exceeding twenty-eight days from the time of the purchase from such person for test purposes of the food or drug, for the sale of which in contravention to the terms of the principal Act the seller is rendered liable to prosecution, and particulars of the offence or offences against the said Act of which the seller is accused, and also the name of the prosecutor, shall be stated on the summons, and the summons shall not be made returnable in a less time than seven days from the day it is served upon the person summoned. Special provision as to time for proceedings.

(*d*) As to cases on the dilution of spirits with water before this Act refer to note (*g*), p. 587, *ante*.

AN ACT

FOR THE BETTER PREVENTION OF DISEASES.

18 & 19 VICT. CAP. 116.

14TH AUGUST, 1855.

WHEREAS the provisions of "The Nuisances Removal and Diseases Prevention Act, 1848," amended by "The Nuisances Removal and Diseases Prevention Amendment Act, 1849," in so far as the same relate to the prevention or mitigation of epidemic, endemic, or contagious diseases, are defective, and it is expedient to substitute other provisions more effectual in that behalf: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as the "Diseases Prevention Act, 1855" (*a*).

Local authority for execution of Act.

2. The local authority for executing this Act shall be the local authority acting in execution of any general Act in force for the time being for the removal of nuisances (*b*).

Expenses of Act.

3. The expenses incurred in execution of this Act shall be borne out of the rates or funds administered by such local authority, under the provisions and for the purposes of any such general Act as is referred to in the preceding section (*c*).

Power of entry.

4. The local authority and their officers shall have power of entry for the purposes of this Act, and for executing or superintending the execution of the regulations and directions of the general board issued under this Act.

Power to

5. Whenever any part of England appears to be threatened with

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(*a*) This Act is repealed, except so far as relates to the metropolis, by the Public Health Act, 1875, s. 343, sched. 5, Part 1, except as to anything duly done or suffered, &c., or any right or liability acquired. See note to section 1 of Nuisances Removal Act for England, 1855, *post*.

(*b*) This and the 3rd section, and every other enactment constituting a local authority for the execution of this Act or providing for the expenses of the execution thereof, except those contained in the 18 & 19 Vict. c. 120, the Metropolis Local Management Act, were repealed by the 23 & 24 Vict. c. 77, s. 10. See Act, *post*.

(*c*) See note to preceding section.

Section 5.

privy council to issue orders that provisions herein contained for prevention of diseases may be put in force (*d*).

or is affected by any formidable epidemic, endemic, or contagious disease, the lords and others of Her Majesty's most honourable privy council, or any three or more of them (the lord president of the council or one of Her Majesty's principal secretaries of state being one) may, by order or orders to be by them from time to time made, direct that the provisions herein contained for the prevention of diseases be put in force in England, or in such parts thereof as in such order or orders respectively may be expressed, and may from time to time, as to all or any of the parts to which any such order or orders extend, and in like manner revoke or renew any such order; and, subject to revocation and renewal as aforesaid, every such order shall be in force for six calendar months, or for such shorter period as in such order shall be expressed; and every such order of Her Majesty's privy council, or of any members thereof, as aforesaid, shall be certified under the hand of the clerk in ordinary of Her Majesty's privy council, and shall be published in the London Gazette; and such publication shall be conclusive evidence of such order to all intents and purposes.

Power to general board of health to issue regulations to carry out such provisions.

6. From time to time after the issuing of any such order as aforesaid, and whilst the same continues in force, the general board of health (*e*) may issue directions and regulations, as the said board think fit—

For the speedy interment of the dead:

For house to house visitation:

For the dispensing of medicines, guarding against the spread of disease, and affording to persons afflicted by or threatened with such epidemic, endemic, or contagious diseases, such medical aid and such accommodation as may be required:

Local extent and duration of regulations of general board.

And from time to time in like manner may revoke, renew, and alter any such directions and regulations as to the said board appears expedient, to extend to all parts in which the provisions of this Act for the prevention of disease shall for the time being be put in force under such orders as aforesaid, unless such directions and regulations be expressly confined to some of such parts, and then to such parts as therein are specified; and (subject to the power of revocation and alteration herein contained) such directions and regulations shall continue in force so long as the said provisions of this Act shall under such order be applicable to the same parts.

Publication of such regulations.

7. Every such direction and regulation as aforesaid, when issued, shall be published in the London Gazette, and the Gazette in which such direction or regulation was published shall be conclusive evidence of the direction or regulation so published, to all intents and purposes.

The local

8. The local authority shall superintend and see to the execution

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(*d*) The provisions relating to the prevention of epidemic diseases in the Public Health Act, 1875, are contained in the 134th to the 140th sections inclusive. They apply to the districts of local authorities as defined by this Act.

(*e*) The powers of general board of health became vested in privy council by 21 and 22 Vict. c. 97.

By the Public Health Act, 1875, section 130, the local government board were empowered to make, alter, and revoke regulations for treatment of persons afflicted with cholera or any other epidemic, endemic, or infectious disease, and preventing the spread of such diseases.

Section 8.

authority to see to the execution of such regulations, &c.

of such directions and regulations, and shall appoint and pay such medical or other officers or persons, and do and provide all such acts, matters, and things, as may be necessary for mitigating such disease, or for superintending or aiding in the execution of such directions and regulations, or for executing the same, as the case may require.

and may direct prosecutions for violating the same.

9. The local authority may from time to time direct any prosecutions or legal proceedings for or in respect of the wilful violation or neglect of any such direction and regulation.

Orders of council, directions and regulations to be laid before parliament.

10. Every order of Her Majesty's privy council, and every direction and regulation of the general board of health, under this Act, shall be laid before both houses of parliament forthwith upon the issuing thereof, if parliament be then sitting, and if not, then within fourteen days next after the commencement of the then next session of parliament.

Order in council may extend to parts and arms of the sea. (*a*)

11. Orders in council issued in pursuance of this Act for putting in force the provisions for the prevention of disease in the said Nuisances Removal and Diseases Prevention Acts contained, in Great Britain, may extend to parts and arms of the sea lying within the jurisdiction of the admiralty; and the board of health (*b*) for England may issue under this Act directions and regulations for cleansing, purifying, ventilating, and disinfecting, and providing medical aid and accommodation, and preventing disease in ships and vessels, as well upon arms and parts of the sea aforesaid as upon inland waters.

Medical officers of unions and others entitled to costs of attending sick on board vessels, when required by orders of general board of health. (*c*)

12. Whenever in compliance with any regulation of the general board of health, which they may be empowered to make under this Act, any medical officer appointed under and by virtue of the laws for the time being for the relief of the poor, shall perform any medical service on board of any vessel, such medical officer shall be entitled to charge extra for any such service, at the general rate of his allowance for his services for the union or place for which he is appointed, and such charges shall be payable by the captain of the vessel, on behalf of the owners, together with any reasonable expenses for the treatment of the sick; and if such services shall be rendered by any medical practitioner who is not a union or parish officer, he shall be entitled to charges for any service rendered on board, with extra remuneration on account of distance, at the same rate as those which he is in the habit of receiving from private patients of the class of those attended and treated on shipboard, to be paid as aforesaid; and in case of dispute in respect of such charges, such dispute may, where the charges do not exceed £20, be determined summarily, at the place where the dispute arises, as in case of seamen's wages not exceeding £50, according to the provisions of the law (*d*) in that

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(*a*) See Sanitary Act, 1866, section 52, with respect to vessels having on board persons affected with infectious diseases; and Public Health Act, 1875, sched. 5, Part III, declaring such vessels to be within 6 Geo. 4, c. 78, although they had not commenced their voyage or have sailed from, or are bound to, some place in the United Kingdom.

(*b*) See note to section 6.

(*c*) Compare section 138 of Public Health Act, 1875.

(*d*) According to provisions contained in sections 188, 523, of Merchant Shipping Act, 17 & 18 Vict. c. 104.

behalf for the time being in force; and any justice before whom complaint is made shall determine summarily as to the amount which is reasonable, according to the accustomed rate of charge within the place for attendance on patients of the like class or conditions as those in respect of whom the charge is made. Section 12.

13. The directions and regulations of the general board of health under this enactment shall be under the seal of the said board, and the hand of the president or two or more members thereof; and any copy of such regulations purporting to bear such seal and signature, whether the said signature and seal be respectively impressed and written, or printed only, shall be evidence in all proceedings in which such regulations may come in question. Authentications of directions and regulations of general board of health. (*e*)

14. Whoever wilfully obstructs any person acting under the authority or employed in the execution of this Act, and whosoever wilfully violates any direction or regulation issued by the general board of health as aforesaid, shall be liable for every such offence to a penalty not exceeding £5, to be appropriated in or towards defraying the expenses of executing this Act. Penalty for obstructing execution of Act.

15. The provisions of any general Act in force for the removal of nuisances, with regard to the service of notices, the proof of orders or resolutions of the local authority, and the recovery of penalties, shall extend and apply to this Act. Certain provisions of Nuisances Removal Act to apply to this Act.

(*e*) Repealed by Statute Law Revision Act, 1878.

AN ACT

TO CONSOLIDATE AND AMEND THE NUISANCES REMOVAL AND DISEASES PREVENTION ACTS, 1848 AND 1849 (*a*).

18 & 19 VICT. CAP. 121.

14TH AUGUST, 1855.

11 & 12 Vict. c. 111. 12 & 13 Vict. c. 123.

WHEREAS the provisions of "The Nuisances Removal and Diseases Prevention Act, 1848," amended by "The Nuisances Removal and Diseases Prevention Amendment Act 1849," are defective, and it is expedient to repeal the said Acts, as far as relates to England, and to substitute other provisions more effectual in that behalf: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:—

Recited Acts repealed as far as relates to England,

1. From and after the passing of this Act, the said Acts are by this section repealed as far as relates to England: Provided always, that all proceedings commenced or taken under the said Acts, and

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(*a*) This Act was amended by 23 & 24 Vict. c. 77, and 26 & 27 Vict. c. 117 (Nuisances Removal Acts for England Amendment Act, 1863), 29 & 30 Vict. c. 41 (Nuisances Removal Act, No. 1, 1866), and 29 & 30 Vict. c. 90 (Sanitary Act, 1866). The whole of these Acts and this Act were, by The Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 60, included in the expression "Nuisances Removal Acts." The Sanitary Act, 1866, was amended by 31 & 32 Vict. c. 100 (Sanitary Loans Act, 1869), 33 & 34 Vict. c. 53 (Sanitary Act, 1870), 35 & 36 Vict. c. 79 (The Public Health Act, 1872), and 37 & 38 Vict. c. 84 (Sanitary Law Amendment Act, 1874).

The 38 & 39 Vict. c. 55 (The Public Health Act, 1875), which consolidates and embodies in a single statute the scattered and isolated provisions contained in various Acts relating to the powers and duties of sanitary authorities in England, repeals the whole of the foregoing enactments, except so far as relates to the metropolis (section 343, Sched. V., Part I.), subject to the savings and qualifications in that section. The repeal of the Sanitary Law Amendment Act, 1874, by the Act of 1875, also excepts the metropolitan police district as well as the metropolis. The second section enacts that the Act shall not extend to Scotland or Ireland, nor, save as therein expressly provided, to the metropolis as defined by the Metropolis Management Act, 1855. There are very few provisions which apply to the metropolis, and those which do are referred to in the notes appended to this and the amending Acts which follow.

not yet completed, may be proceeded with under the said Acts; and all contracts or works undertaken by virtue of the said Acts shall continue and be effectual as if the said Acts had not been repealed.

Section 1.

except as to proceedings commenced.(*b*)

2. In this Act the following words and expressions have the meanings by this section hereinafter assigned to them, unless such meanings be repugnant to or inconsistent with the context; (that is to say,) the word "place" includes any city, borough, district under the Public Health Act, parish, township, or hamlet, or part of any such city, borough, district, town, parish, township, or hamlet; the word "guardians" includes the directors, wardens, overseers, governors, or other like officers having the management of the poor for any parish, or place where the matter or any part of the matter requiring the cognizance of any such officer arises; the word "borough," and the expressions "mayor, aldermen, and burgesses," "council," and "borough fund," have respectively the same meaning as in the Acts for the regulation of municipal corporations, and shall also respectively mean, include, and apply to any royal borough, royal town, or other town having a warden, high bailiff, borough reeve, or other chief officer, and burgesses or inhabitants, however designated, associated with him in the government or management thereof, or any town or place having a governing body therein in the nature of a corporation or otherwise, and to the chief officers and governing bodies of such boroughs, towns, and places, and to the funds and property under the management of or at the disposal of such chief officers and governing bodies; the expression "Improvement Act" means an Act for regulating and managing the police of, and for draining, cleansing, paving, lighting, watching, and improving a place, and an Act for any of those purposes; the word "owner" includes any person receiving rents of the property in respect of which that word is used from the occupier of such property on his own account, or as trustee or agent for any other person, or as receiver or sequestrator appointed by the court of chancery or under any order thereof, or who would receive the same if such property were let to a tenant (*c*); the word "premises" extends to all messuages, lands, or tenements, whether open or inclosed, whether built on or not, and whether public or private; the word "parish" includes every township or place separately maintaining its poor, or separately maintaining its own highways; the expression "quarter sessions" means the court of general or quarter sessions of the peace for a county, riding, or division of a county, city, or borough; the word "person," and words applying to any person or individual, apply to and include corporations, whether aggregate or sole; and the expression "two justices" shall, in addition to its ordinary signification, mean one stipendiary or police magistrate acting in any police court for the district.

Interpretation of certain terms used in this Act.

(*b*) After the passing of the Public Health Act, 1875, a local board made a rate referring to a repealed Act. *Held*, that the notice of the rate was a "thing done" within the provision, section 343, of the Act, and valid; *R.* v. *West Riding Yorkshire, JJ.*, L. R. 1 Q. B. D. 220. An order prohibiting a smoke nuisance before the passing of the same Act, *held*, "a liability" within the same provision; *Barnes* v. *Eddleston*, L. R. 1 Ex. D., 102.

(*c*) See failure of local authority to recover expenses of works for abatement of nuisance against parties acting under power of attorney as owners in *Blything* v. *Warton*, 3 B. & S. p. 352.

PART I.
Section 3.

PART I.

And with respect to the constitution of the local authority for the execution of this Act, the expenses of its execution, the description of nuisances that may be dealt with under it, and the powers of entry for the purposes of the Act, be it enacted thus:

The local authority to execute this Act in places as herein stated (*a*)

3. The following bodies shall respectively be the local authority to execute this Act in the districts hereunder stated in England:

In any place within which the Public Health Act is or shall be in force, the local board of health:

In any other place wherein a council exists or shall exist, the mayor, aldermen, and burgesses by the council, except in the city of London and the liberties thereof, where the local authority shall be the commissioners of sewers for the time being; and except in the city of Oxford and borough of Cambridge, where the local authority shall be the commissioners acting in execution of the Local Improvement Acts in force respectively in the said city and borough:

In any place in which there is no local board of health or council, and where there are or shall be trustees or commissioners under an improvement Act, such trustees or commissioners:

In any place within which there is no such local board of health nor council, body of trustees, or commissioners, and where there is or shall be a board for the repair of the highways of such place, that board:

In any place where there is no such local board of health, council, body of trustees, or commissioners, nor highway board, a committee for carrying this Act into execution, by the name of "The Nuisances Removal Committee," of which the surveyor or surveyors of highways for the time being of such place shall be *ex officio* a member or members, may be annually chosen by the vestry on the same day as the overseers or surveyors of highways, and the first of such committees may be chosen at a vestry to be specially held for that purpose; and such committee may consist of such number of members as the vestry shall determine, not being more than twelve, exclusive of such surveyor or surveyors, and of such committee three shall be a quorum:

In any place wherein there is no such local board of health, council, body of trustees or commissioners, highway board or committee appointed as aforesaid, and wherein there is or shall be a board of inspectors for lighting or watching under the Act 3 & 4 Will. 4, c. 90, that board with the surveyor of highways:

(*a*) This and the 6th, 7th, and 9th sections of this Act are repealed by 23 & 24 Vict. c. 77, s. 1, save as to charges and expenses already incurred, &c. Section 6 of that Act contains a provision, that as regards the metropolis, vestries, and district boards within their respective parishes and districts, shall continue to be the local authority for the execution of the Nuisances Removal Act, and their charges and expenses shall be defrayed as if that Act (23 & 24 Vict. c. 77) had not been passed; and by the Sanitary Act, 1866, the term "nuisance authority" is defined to mean, any authority empowered to execute the Nuisances Removal Acts.

In any place in which there is no such local board of health, council, body of trustees, or commissioners, nor highway board, nor committee appointed as aforesaid, nor board of inspectors for lighting and watching, the guardians and overseers of the poor and the surveyors of the highways in and for such place.

As to filling up vacancies.

4. On any vacancy in such nuisances removal committe arising from death, change of residence or otherwise, notice shall be given by the committee to the churchwardens, who shall forthwith summon a meeting of the vestry, and fill up such vacancy by election; and until such vacancy is filled up the remaining members of the committee may act in all respects as if their number was complete.

Power to local authority to appoint committees.

5. The local authority may appoint any committee of their own body to receive notices, take proceedings, and in all or certain specified respects execute this Act, whereof two shall be a quorum; and such local authority, or their committee, may, in each particular case, by order in writing (*b*) under the hand of the chairman of such body or committee, empower any officer or person to make complaints and take proceeding on their behalf.

As to the execution of this Act in extra-parochial places. (*c*)

6. In extra-parochial places not comprised within the jurisdiction of any of the local authorities aforesaid, and having a population of not less than two hundred persons, the local authority for the execution of this Act shall be a nuisance removal committee, elected annually by the householders within the extra parochial place:

The first election of such committee shall take place at a meeting of such householders summoned for that purpose by the churchwardens of the adjacent place having the largest common boundary, with such extra-parochial place; and

Subsequent elections shall be held annually on some day in Easter week at meetings summoned by the chairman of the authority for the year preceding:

Extra-parochial places not so comprised as aforesaid, and having a population of less than two hundred persons, shall for the purpose of this Act be attached to and form part of the adjacent place having the largest common boundary with the extra-parochial place, and notice of vestry meetings for the election of a local authority under and for the purposes of this Act shall be given in such extra-parochial places, and the householders within such places may attend such vestry meetings, and vote on such elections.

As to defraying expenses of executing this Act. (*d*)

7. All charges and expenses incurred by the local authority in executing this Act, and not recovered, as by this Act provided, may be defrayed as follows; to wit,

Out of general district rates, where the local authority is a local board of health;

Out of the borough fund or borough rate, where the local authority is the mayor, aldermen, and burgesses by the council, or if there

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(*b*) The order must have been in writing; *Isle of Wight Ferry Company* v. *Ryde Commissioners*, 25 J. P. 454.

(*c*) Repealed by 23 & 24 Vict. c. 77, with a saving in favour of vestries and district boards in the metropolis. See note to section 3, *ante*.

(*d*) See note to section 3, *ante*.

PART. I.
Section 7.

be an improvement Act for the borough administered by the council, then out of rates levied thereunder applicable to the purposes of such improvement Act; or in the city of London and the liberties thereof, any rates or funds administered by the commissioners of sewers for the said city and liberties:

Provided always, that in the city of Oxford and borough of Cambridge such expenses shall be deemed annual charges and expenses of cleansing the streets of the said city and borough respectively, and shall be so payable;

Out of the rates levied for the purposes of improvement under any improvement Act, where the local authority is a body of trustees or commissioners acting in execution of the powers of such an Act;

Out of highway rates, or any fund applicable in aid or in lieu thereof, where the local authority is a highway board, or a nuisance removal committee;

Out of the rates for lighting and watching, where the local authority is a board of inspectors appointed for lighting and watching;

And if there be no such rates or funds, or if the local authority be the guardians and surveyors of highways, then out of the rates or funds applicable to the relief of the poor of the parish or place wherein such rates or funds are collected or arise, if such parish or place be co-extensive with the district within which the charges and expenses are incurred, but if such parish or place be now or hereafter shall be partly comprised within and partly without the limits of a place where a local authority, other than a highway board, nuisance removal committee, inspectors of watching and lighting, and surveyors or guardians and surveyors exists or shall exist, all the charges and expenses incurred in the district comprising that part of the parish or place which is excluded from such limits shall be defrayed out of any highway rate or rates, or any funds applicable in lieu thereof, collected or raised within the part so excluded; and if there be more than one highway rate collected within such district, the local authority shall settle the proportion in which the respective parties or places liable thereto shall bear such charges and expenses; and if any portion of such excluded part be exempt from such highway rate or rates, then all the charges and expenses incurred in the whole of such excluded part shall be defrayed out of any district police rate or other rate which may by the Act 12 & 13 Vict. cap. 65, be raised and assessed upon such excluded part.

And when the local authority has not control of such rates or funds, the officer or person having the custody or control thereof shall pay over the amount to the local authority, on the order of two justices, directed to such officer or person; and on neglect or refusal to pay the sum specified in such order for six days after the service thereof, the same may, by warrant under the hands of the same or any two justices, be levied by distress and sale of the goods and chattels of the officer or person in default, and such levy shall include the costs of such distress and sale:

In extra-parochial places having a population of not less than two hundred persons, out of a rate assessed by the local authority on all such property in the place as would be assessable to highway rate if such rate were levied therein:

In extra-parochial places having a population of less than two hundred persons, out of a similar rate assessed by the surveyor

of highways of the adjacent place having the largest common boundary with such extra-parochial place :

And the local authority in the first case, and the surveyor of highways in the second, may levy and collect the sums so assessed, in the same manner, and with the same remedies in case of any default in payment thereof, and with the same right of appeal against the amount of such assessment reserved to the person assessed, as are provided by the law in force for the time being with regard to rates for the repair of highways.

What are deemed nuisances under this Act.

8. The word "nuisances" (*a*) under this Act shall include—

Any premises in such a state as to be a nuisance or injurious to health :

Any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit so foul as to be a nuisance or injurious to health :

Any animal so kept as to be a nuisance or injurious to health :

Any accumulation or deposit (*b*) which is a nuisance or injurious to health :

Provided always, that no such accumulation or deposit as shall be necessary for the effectual carrying on of any business or manufacture shall be punishable as a nuisance under this section when it is proved to the satisfaction of the justices that the accumulation or deposit has not been kept longer than is necessary for the pur-

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(*a*) This definition of the term "nuisances" is by the Sanitary Act, 1866, section 19, extended to houses overcrowded, fireplaces, furnaces and chimneys (not in private dwelling houses) in the condition described in that section; see the Act *post*. The 108 section of the Public Health Act, 1875, empowering local authorities to proceed in case of nuisances caused by acts or defaults without their district, is extended to the metropolis so far as to authorize certain proceedings to be taken under it by any nuisance authority (*i.e.* the local authority in the metropolis for the execution of the Nuisances Removal Act, 1855, and the Acts amending the same) in respect of nuisances within the area of their jurisdiction caused by acts, &c., within the district of a local authority under the Public Health Act. It had been previously decided that where certain brewers had poured refuse into a river in one parish and created a nuisance in another, the local authority could not prefer a complaint: *R.* v. *Cotton*, 28 L. J. M. C. 22.

The dripping of water from a railway bridge upon a highway underneath, was held not to be a nuisance within this Act: *Great Western Railway Company* v. *Bishop*, L. R. 7 Q. B. 550; 41 L. J. M. C. 120; as to nuisances within this Act see *Soltau* v. *De Held*, 2 Sim. (N.S.) 133.

The escape of sulphuretted hydrogen gas from a sewer which appellants were bound to cleanse, was held a nuisance within this section (8), and respondents might make complaint though they might have contributed to the nuisance: *St. Helen's Chemical Company* v. *Corporation of St. Helen's*, L. R. 1 Ex. D. (C. A.) 196.

A house which is so overcrowded as to be dangerous or prejudicial to the health of the inmates, is included within the definitions of "nuisances" in section 19 of 29 & 30 Vict. c. 90, although occupied by one family only: *Guard. of Rye Union* v. *Payne*, 40 J. P. 166; 44 L. J. M. C. 148.

An order to discontinue black smoke under a repealed Act was held to be a "liability" within saving of repealing Act: *Barnes* v. *Eddleston*, L. R. 1 Ex. D. 102.

(*b*) The nuisance must be injurious to health: *Great Western Railway Company* v. *Bishop*, L. R. 7 Q. B. 550; and see *Smith* v. *Waghorn*, 27 J.P. 744; see section 53 of Sanitary Act, 1866, as to the periodical removal of manure in mews, stables, &c.

PART I.

Section 8.

poses of such business or manufacture, and that the best available means have been taken for protecting the public from injury to health thereby (*a*).

Power to local authority to appoint a sanitary inspector, and allow him a proper salary (*b*).

9. The local authority shall, for the purposes of this Act, appoint or employ, or join with other local authorities in appointing or employing, a sanitary inspector or inspectors, and may appoint a convenient place for his or their office, and may allow to every such person on account of his employment a proper salary or allowance; and where local authorities join in such appointment or employment they may apportion among themselves the payment of such salary or allowance: provided always, that where the local authority has already appointed an officer who executes the duties of such inspector under any improvement Act, it shall not be necessary to appoint any other inspector under this Act, but the inspector acting in execution of the improvement Act shall have all the powers, authorities, and privileges granted to any inspector appointed under this Act.

Notice of nuisances to be given to local authority, &c., to ground proceedings (*c*).

10. Notice of nuisance may be given to the local authority by any person aggrieved thereby, or by any of the following persons; the sanitary inspector or any paid officer under the said local authority; two or more inhabitant householders of the parish or place to which the notice relates; the relieving officer of the union or parish; any constable or any officer of the constabulary or police force of the district or place; and in case the premises be a common lodging house, any person appointed for the inspection of common lodging houses; and the local authority may take cognizance of any such nuisance after entry made as hereinafter provided, or in conformity with any improvement Act under which the inspector has been appointed.

Power of entry to local authority or their officer (*d*).

11. The local authority shall have power of entry for the following purposes of this Act, and under the following [illegible]:—

1. To ground proceedings.

For this purpose, when they or any of their officers have reason-

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(*a*) See *Scholefield* v. *Schunk*, 19 J. P. 84.

(*b*) Repealed: see note to section 3, *ante*.

(*c*) See Sanitary Act, 1866, section 20, with respect to the duty of the nuisance authority as to the inspection of nuisances, &c.

By the Sanitary Act, 1866, section 35, on application by the nuisance authority, the secretary of state (now the local government board) may, in manner therein described, declare the enactment mentioned in that section to be in force, empowering a nuisance authority to make regulations for fixing the number of persons who may occupy a house or part of a house let in lodgings or occupied by members of more than one family, for registration of such houses and other purposes; and see section 37 empowering the nuisance authority to provide hospitals, &c., and section 38 *et seq.* as to penalties when persons suffering from contagious or infectious diseases expose themselves, or persons letting premises in which infected persons have lodged and section 42 as to cellar dwellings.

(*d*) By the Sanitary Act, 1866, section 31, the power of entry may be exercised at any hour when the business in respect of which the nuisance arises is in progress, &c.; and see as to time within which justice's order is in force: *Amys* v. *Creed*, L. R. 4 Q. B. 122, cited in note to section 21 of Sanitary Act, 1866, *post*.

able grounds for believing that a nuisance exists on any private premises (*e*), demand may be made by them or their officer, on any person having custody of the premises, of admission to inspect the same, at any hour between nine in the morning and six in the evening; and if admission be not granted, any justice having jurisdiction in the place may, on oath made before him of belief in the existence of the nuisance, and after reasonable notice of the intended application to such justice being given in writing to the party on whose premises the nuisance is believed to exist, by order under his hand require the person having the custody of the premises to admit the local authority or their officer; and if no person having custody of the premises can be discovered, any such justice may and shall, on oath made before him of belief in the existence of such nuisance, and of the fact that no person having custody of the premises can be discovered, by order under his hand authorize the local authority or their officers to enter the premises between the hours aforesaid.

2. To examine premises where nuisances exist, to ascertain the course of drains, and to execute or inspect works ordered by justices to be done under this Act.

For these purposes, whenever, under the provisions of this Act, a nuisance has been ascertained to exist, or when an order of abatement or prohibition under this Act has been made, or when it becomes necessary to ascertain the course of a drain, the local authority may enter on the premises, by themselves or their officers, between the hours aforesaid, until the nuisance shall have been abated, or the course of the drain shall have been ascertained, or the works ordered to be done shall have been completed, as the case may be.

3. To remove or abate a nuisance in case of non-compliance with or infringement of the order of justices, or to inspect or examine any carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread or flour (*f*), under the powers and for the purposes of this Act.

For this purpose the local authority or their officer may from time to time enter the premises where the nuisance exists, or the carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour is found, at all reasonable hours (*g*), or at all hours during which business is carried on on such premises, without notice.

PART II.

With regard to the removal of nuisances, be it enacted thus:—

Proceedings by local authority

12. In any case where a nuisance is so ascertained by the local authority to exist, or where the nuisance in their opinion did exist at the time when the notice was given, and, although the same may

(*e*) By the Metropolis Water Act, 1871, section 113, *ante*, the absence of the prescribed fittings after the prescribed time, is declared to be a nuisance within this and sections 12–19 inclusive, and all the provisions of this Act.

(*f*) By the Sanitary Law Amendment Act, 1874, the provision is extended to "milk."

(*g*) The question what is a reasonable time must depend on circumstances: *Cook* v. *Montagu*, 41 L. J. M. C. 198; L. R. 7 Q. B. 418; *Small* v. *Buckley*, 32 L. T. (N.S.) 727.

PART II.

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before justices in the case of nuisances likely to recur, &c. (*a*).

If proved to justices that nuisance, exists, &c., they shall issue order for abatement, &c.

have been since removed or discontinued, is in their opinion likely to recur or to be repeated on the same premises or any part thereof, they shall cause complaint thereof to be made before a justice of the peace; and such justice shall thereupon issue a summons requiring the person by whose act, default, permission, or sufferance the nuisance arises or continues, or, if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before any two justices, in petty sessions assembled, at the usual place of meeting, who shall proceed to inquire into the said complaint; and if it be proved to their satisfaction that the nuisance exists, or did exist at the time when the notice was given, or, if removed or discontinued since the notice was given, that it is likely to recur or to be repeated, the justices shall make an order in writing under their hands and seals on such person, owner, or occupier for the abatement or discontinuance and prohibition of the nuisance as hereinafter mentioned, and shall also

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(*a*) By the action of the sea a quantity of seaweed was drifted into a harbour, and, being left there, became a nuisance; held, that the company in whom the harbour was vested, were bound to remove it, and not having done so, an order was rightly made upon them under this section; *Margate Pier Company* v. *Borough of Margate*, 5 Cox Mag. Cases; 20 L. T. (N.S.) 564.

The owner of a market was held liable for a nuisance caused by the droppings of sheep left in pens in the market, as a person by whose act, default, or sufferance, the nuisance was created; *Draper* v. *Sperring*, 10 C. B. (N.S.) 113.

An owner of works was held liable for a nuisance caused by acts of his servants; *Barnes* v. *Akroyd*, 41 L. J. M. C. 110.

An order was made by justices for the abatement of an existing nuisance and for the prohibition of its recurrence; held, that so much of the order as directed an abatement was bad, but the part prohibiting recurrence was good; *Mayor, &c., of Scarborough* v. *Rural Sanitary Authority of Scarborough*, L. R. 1 Ex. D. 344; and see *R.* v. *Justices of Cumberland*, 41 J. P. 454.

When the accumulation occasioned by the flow of sewage from several houses caused a nuisance, the occupier of each house was decided to be liable; *Guardians of Hendon* v. *Bowles*, 20 L. T. (N.S.) 609.

Persons in whose premises nuisance commences, are liable as persons by whose acts the nuisance arose; *Brown* v. *Bussell*, *Francomb* v. *Freeman*, L. R. 3 Q. B. 251.

The jurisdiction of justices only arises where both cause and effect of nuisance are within area of local authority; *R.* v. *Cotton*, 1 E. & E. 203. But see now Public Health Act, 1875, section 108.

An order of abatement of a nuisance having been made, the nuisance continuing, an order prohibiting the recurrence was made. Two informations having been laid, one in respect of each order, but both founded on the same nuisance, it was held that the act complained of being the same in each case, there could not be two convictions in respect of it; *Eddleston* v. *Barnes*, L. R. 1 Ex. D. 67.

The 13th section of 23 & 24 Vict. c. 77, directs the justices to issue a summons upon complaint by any inhabitant of any parish or place of the existence of any nuisance on any private premises, and the justices hearing the complaint are to act in relation thereto as in cases under this section. The Sanitary Act, 1866, section 21, requires notice to be given to the person by whose act, default, or sufferance the nuisances arises, before taking proceedings under this section. And see proviso as to notice where the nuisance arises from the want or defective construction of any structural convenience; and 22nd and following sections as to the cleansing and disinfecting of houses, and other requirements.

make an order for the payment of all costs incurred up to the time of hearing or making the order for abatement or discontinuance or prohibition of the nuisance.

Justices order for abatement (*b*).

13. By their order the justices may require the person on whom it is made to provide sufficient privy accommodation, means of drainage or ventilation, or to make safe and habitable, or to pave, cleanse, whitewash, disinfect, or purify the premises which are a nuisance or injurious to health, or such part thereof as the justices may direct in their order, or to drain, empty, cleanse, fill up, amend, or remove the injurious pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit which is a nuisance or injurious to health, or to provide a substitute for that complained of, or to carry away the accumulation or deposit which is a nuisance or injurious to health, or to provide for the cleanly and wholesome keeping of the animal kept so as to be a nuisance or injurious to health, or if it be proved to the justices to be impossible so to provide, then to remove the animal, or any or all of these things (according to the nature of the nuisance), or to do such other works or acts as are necessary to abate the nuisance complained of, in such manner and within such time as in such order shall be specified; and if the justices are of opinion that such or the like nuisance is likely to recur, the justices may further prohibit the recurrence of it, and direct the works necessary to prevent such recurrence, as the case may in the judgment of such justices require; and if the nuisance proved to exist be such as to render a house or building, in the judgment of the justices, unfit for human habitation, they may prohibit the using thereof for that purpose until it is rendered fit for that purpose in the judgment of the justices, and on their being satisfied that it has been rendered fit for such purpose they may determine their previous order by another declaring such house habitable, from the date of which other order such house may be let or inhabited.

Prohibitive order against future nuisance.

Penalty for contravention of order of abatement; and of prohibition (*c*).

Local authority may enter and remove or abate nuisance.

14. Any person not obeying the said order for abatement shall, if he fail to satisfy the justices that he has used all due diligence to carry out such order, be liable for every such offence to a penalty of not more than ten shillings per day during his default: and any person knowingly and wilfully acting contrary to the said order of prohibition shall be liable for every such offence to a penalty not exceeding twenty shillings per day during such contrary action; and the local authority may (*d*) under the powers of entry given by this Act, enter the premises to which the order relates, and remove or abate the nuisance condemned or prohibited, and do whatever may

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(*b*) This order cannot be appealed against; *Ex parte Corporation of Liverpool*, 8 E. & B. 537.

(*c*) An order on owner, and in default on local authority, and the latter did not act, owner was held liable to conviction; *Tomlinson* v. *Nuisance Removal Committee of Great Stanmore*, 12 L. T. (N.S.) 118.

A local board are not compellable by *mandamus* to enforce an order they had obtained; *Ex parte Bassett*, 7 E. & B. 280. See now Sanitary Act, 1866, section 49, as to defaults by nuisance authorities and other bodies, and *R.* v. *Cockerell*, L. R. 6 Q. B. 252.

As to what constitutes default; *Higgins* v. *Northwich Union*, 22 L. T. (N.S.) 752; and as to continuing offence, *R.* v. *Waterhouse*, L. R. 7. Q. B. 545; 41 L. J. M. C. 115.

(*d*) These words are discretionary; *Re Local Board of Health of Ham*, 26 L. J. M. C. 64.

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be necessary in execution of such order, and charge the cost to the person on whom the order is made, as hereinafter provided.

Appeal against order of prohibition.

15. Any such order of prohibition may be appealed against as provided in this Act.

Appeal against order of abatement when structural works are required (*a*).

16. When it shall appear to the justices that the execution o structural works is required for the abatement of a nuisance, they may direct such works to be carried out under the direction or with the consent or approval of any public board, trustees, or commissioners having jurisdiction in the place in respect of such works; and if within seven days from the date of the order the person on whom it is made shall have given notice to the local authority of his intention to appeal against it as provided in this Act, and shall have entered into recognizances to try such appeal as provided by this Act, and shall appeal accordingly, no liability to penalty shall arise, or shall any work be done nor proceedings taken under such order until after the determination of such appeal, unless such appeal cease to be prosecuted.

If person causing nuisance cannot be found, local authority to execute order at once.

17. Whenever it appears to the satisfaction of the justices that the person by whose act or default the nuisance arises, or the owner or occupier of the premises, is not known or cannot be found, then such order may be addressed to and executed by such local authority, and the cost defrayed out of the rates or funds applicable to the execution of this Act (*b*).

Manure, &c., to be sold.

18. Any matter or thing removed by the local authority in pursuance of this enactment may be sold by public auction, after not less than five days' notice by posting bills distributed in the locality, unless in cases where the delay would be prejudicial to health, when the justices may direct the immediate removal, destruction or sale of the matter or thing; and the money arising from the sale retained by the local authority, and applied in payment of all expenses incurred under this Act with reference to such nuisance, and the surplus, if any, shall be paid, on demand, by the local authority, to the owner of such matter or thing.

Costs and expenses of works to be paid by person on whom order is made, or owner or occupier (*c*).

19. All reasonable costs and expenses from time to time incurred in making a complaint, or giving notice, or in obtaining an order of justices under this Act, or in carrying the same into effect under this Act, shall be deemed to be money paid for the use and at the request of the person on whom the order is made, or if the order be made on the local anthority, or if no order be made, but the nuisance be

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(*a*) As to what is an order to abate, and not to execute structural works, see *Ex parte Mayor of Liverpool*, 27 L. J. M. C. 89.

Order of justices is not necessary for executing structural works; *R.* v. *Nuisances Removal Committee of Middleton*, 28 L. J. M. C. 41.

(*b*) See Sanitary Act, 1866, section 21, as to abatement in certain nuisances by and at the cost of nuisance authority.

(*c*) See Sanitary Act, 1866, section 34, conferring a discretion on the nuisance authority to demand payment from owner or occupier, and as to deduction from rent by occupier.

It was held in *Bird* v. *Elwes*, 37 L. J. Ex. 91, that a landlord was not liable under an agreement by him to repair, to cleanse a piece of water, and that the expense of removing the nuisance was not a charge within the meaning of the agreement.

proved to have existed when the complaint was made or the notice given, then of the person by whose act or default the nuisance was caused; and in case of nuisances caused by the act or default of the owner of premises, the said premises shall be and continue chargeable with such costs and expenses, and also with the amount of any penalties incurred under this Act, until the same be fully discharged, provided that such costs and expenses shall not exceed in the whole one year's rackrent of the premises; and such costs and expenses, and penalties, together with the charges of suing for the same, may be recovered in any county or superior court (*d*) or, if the local authority think fit, before any two justices of the peace; and the said justices shall have power to divide such costs, expenses, and penalties between the persons by whose act or default the nuisance arises, in such manner as they shall consider reasonable; and if it appear to them that a complaint made under this Act is frivolous or unfounded, they may order the payment by the local authority or person making the complaint of the costs incurred by the person against whom the complaint is made, or any part thereof.

Proceedings before justices to recover expenses.

20. Where any costs, expenses, or penalties are due under or in consequence of any order of justices made in pursuance of this Act as aforesaid, any justice of the peace, upon the application of the local authority, shall issue a summons requiring the person from whom they are due to appear before two justices at a time and place to be named therein; and upon proof to the satisfaction of the justices present that any such costs, expenses, or penalties are so due, such justices, unless they think fit to excuse the party summoned upon the ground of poverty or other special circumstances, shall, by order in writing under their hands and seals, order him to pay the amount to the local authority at once, or by such instalments as the justices think fit, together with the charges attending such application and the proceedings thereon; and if the amount of such order, or any instalment thereof, be not paid within fourteen days after the same is due, the same may, by warrant of the said or other justices, be levied by distress and sale.

Surveyors of highways to cleanse ditches, &c., paying owners, &c., for damages (*e*).

21. All surveyors and district surveyors may make, scour, cleanse, and keep open all ditches, gutters, drains, or watercourses in and through any lands or grounds adjoining or lying near to any highway, upon paying the owner or occupier of such lands or grounds, provided they are not waste or common, for the damages which he shall thereby sustain, to be settled and paid in such manner as the damages for getting materials in enclosed lands or grounds are directed to be settled and paid by the law in force for the time being with regard to highways.

Power to local authority to cover

22. Whenever any ditch, gutter, drain, or watercourse used or partly used for the conveyance of any water, filth, sewage, or other

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If, on default of owner, local authority execute the order, the owner is not liable under this section to an action for money paid; *Guardians of Blything Union* v. *Warton*, 32 L. J. M. C. 132.

(*d*) It was decided under 11 & 12 Vict. c. 123, s. 3, that the county court had jurisdiction whatever the amount of costs, and notwithstanding a question of title was involved; *R.* v. *Harden*, 2 E. & B. 128; 22 L. J. Q. B. 299. See *Hertford Union* v. *Kimpton*, 25 L. J. M. C. 41.

(*e*) Tender of satisfaction or payment is not a condition precedent to the right of entry; *Peters* v. *Clarson*, 7 M. & G. 548.

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and improve open ditches, &c. (*a*).

matter from any house, buildings, or premises is a nuisance within the meaning of this Act, and cannot, in the opinion of the local authority, be rendered innocuous without the laying down of a sewer or of some other structure along the same or part thereof or instead thereof, such local authority shall and they are hereby required to lay down such sewer or other structure, and to keep the same in good and serviceable repair; and they are hereby declared to have the same powers as to entering lands for the purposes thereof, and to be entitled to recover the same penalties in case of interference, as are contained in the sixty-seventh and sixty-eighth sections of the Act passed in the fifth and sixth years of the reign of King William the Fourth, intituled "An Act for consolidating and amending the Laws relating to Highways in England"; and such local authority are hereby authorized and empowered to assess (*b*) every house, building, or premises then or at any time thereafter using for the purposes aforesaid the said ditch, gutter, drain, watercourse, sewer, or other structure, to such payment, either immediate or annual, or distributed over a term of years, as they shall think just and reasonable, and, after fourteen days' notice at the least left on the premises so assessed, to levy and collect the sum and sums so assessed in the same manner, and with the same remedies in case of default in payment thereof, as highway rates are by the law in force for the time being leviable and collectable, and with the same right and power of appeal (*c*) against the amount of such assessment reserved to the person or person so assessed as by the law for the time being in force shall be given against any rate made for the repair of the highways; and the provisions contained in this section shall be deemed to be part of the law relating to highways in England: Provided always, that where such ditch, gutter, drain, or watercourse shall, as to parts thereof, be within the jurisdiction of different local authorities, this enactment shall apply to each local authority only as to so much of the works hereby required, and the expenses thereof, as is included within the respective jurisdiction of that authority: Provided also, that such assessment shall in no case exceed a shilling in the pound on the assessment to the highway rate, if any.

(*a*) Members of a highway board being the local authority under this Act, were restrained from allowing fresh communications with a sewer so as to occasion a nuisance; *Attorney-General* v. *Richmond*, L. R. 2 Eq. 300. And see *Cator* v. *Lewisham District Board*, 5 B. & S. 115; *Attorney-General* v. *Colney Hatch Lunatic Asylum*, L. R. 4 Ch. 146; *E. Derby* v. *Bury Improvement Commissioners* (cited in note to section 69 of Metropolis Management Act, 1855, that a sewer may be laid down in a new line, not necessarily in the line of the old watercourse); and decisions cited in sections 69 and 135 of Metropolis Management Act, 1855, *ante*.

(*b*) Local authority has no power to assess houses in another parish for the expenses of continuing a sewer; *R.* v. *Warner*, 27 L. J. M. C. 144; *R.* v. *Tatham*, 8 E. & B. 915; and see *R.* v. *Cotton*, 28 L. J. M. C. 22.

An assesement is not bad because it does not provide for houses which might be aftewards built, and use the sewer; *R.* v. *Justices of Middlesex*, 2 Jur. (N.S.) 1045. And as to what is using a sewer, and liability to second assessment, *R.* v. *Warner*, 6 E. & B. 395.

Houses must be assessed before highways can be resorted to; *R.* v. *Goss*, 30 L. J. M. C. 41.

As to *mandamus* to nuisances removal committee to construct a sewer, see *R.* v. *Gee*. 23 J. P. 374; 28 L. J. Q. B. 298.

(*c*) As to time for notice of appeal, and application of limit of one shilling in the pound, *R.* v. *Nuisance Removal Committee of Middleton*, 1 E. & E. 98.

23. Any person (*d*) or company engaged in the manufacture of gas who shall at any time cause or suffer (*e*) to be brought or to flow into any stream, reservoir, or aqueduct, pond or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any Act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, pond or place for water shall be fouled, shall forfeit for every such offence the sum of two hundred pounds.

Penalty for causing water to be corrupted by gas washings.

24. Such penalty may be recovered, with full costs of suit, in any of the superior courts, by the person into whose water such washing or other substance shall be conveyed or shall flow, or whose water shall be fouled by any such Act as aforesaid, or if there be no such person, or in default of proceedings by such person, after notice to him from the local authority of their intention to proceed for such penalty, by the local authority; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased.

Penalty to be sued for in superior courts within six months.

25. In addition to the said penalty of two hundred pounds (and whether such penalty shall have been recovered or not), the person or company so offending shall forfeit the sum of twenty pounds (to be recovered in the like manner) for each day during which such washing or other substance shall be brought or shall flow as aforesaid, or during which the Act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on such person or company by the local authority, or the person into whose water such washing or other substance shall be brought or flow, or whose water shall be fouled thereby, and such penalty shall be paid to the parties from whom such notice shall proceed; and all moneys recovered by a local authority under this or the preceding section shall, after payment of any damage caused by the Act for which the penalty is imposed, be applied towards defraying the expenses of executing this Act.

Daily penalty during the continuance of the offence.

26. The sanitary inspector may at all reasonable times inspect and examine any carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour exposed for sale, or in the course of or on their way to slaughtering, dressing, or preparation for sale or use, or landed from any ship or vessel in any port in England; and in case any such carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour appear to him to be unfit for such food, the same

Penalty on sale of unwholesome meat, &c. (*f*)

(*d*) By interpretation clause, section 2, "person" shall include corporations whether aggregate or sole.

(*e*) Not involuntary sufferance; *Hopkins* v. *Birmingham Gas Light Company*, 6 Jur. (N.S.) 173: 7 Jur. (N.S.) 213.

The provisions in this and the 24th and 25th sections were held to supersede the provisions in a local Act; *Parry* v. *Croydon Gas and Coke Company*, 15 C. B. (N.S.) 568.

(*f*) This section is repealed by 26 & 27 Vict. c. 117, s. 91. A sanitary inspector under a Local Improvement Act is not entitled to seize unwholesome meat, &c., unless exposed for sale or intended for food; *Elias* v. *Nightingale*, 27 L. J. M. C. 151. To expose for sale, or to have possession of with intent to sell, things unfit for human food, is a common law nuisance; *Shillito* v. *Thompson*, L. R. 1 Q. B. D. 12.

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may be seized ; and if it appear to a justice that any such carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour is unfit for the food of man, he shall order the same to be destroyed (*a*) or to be disposed of as to prevent its being exposed for sale or used for such food ; and the person to whom such carcase, meat, poultry, game flesh, fish, fruit, vegetables, corn, bread, or flour belongs, or in whose custody the same is found, shall be liable to a penalty not exceeding ten pounds for every carcase, fish, or piece of meat, flesh, or fish, or any poultry or game, or for the parcel of fruit, vegetables, corn, bread, or flour so found.

As to nuisances arising in cases of noxious trades, businesses, processes, or manufactures.

27. If any candle house, melting house, melting place, or soap-house, or any slaughter-house, or any building or place for boiling offal or blood, or for boiling, burning, or crushing bones, or any manufactory, building, or place used for any trade, business, process, or manufacture causing effluvia, be at any time certified to the local authority by any medical officer, or any two legally qualified practitioners (*b*) to be a nuisance or injurious to the health of the inhabitants of the neighbourhood, (*c*) the local authority shall direct complaint to be made before any justice, who may summon before any two justices in petty sessions assembled at their usual place of meeting the person by or in whose behalf the work so complained of is carried on, and such justices shall inquire into such complaint, and if it shall appear to such justices that the trade or business carried on by the person complained against is a nuisance, or causes any effluvia injurious to the health of the inhabitants of the neighbourhood, and that such person shall not have used the best practicable means for abating such nuisance or preventing or counteracting such effluvia, the person so offending (being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier), shall, upon a summary conviction for such offence, forfeit and pay a sum of not more than five pounds nor less than forty shillings, and upon a second conviction for such offence the sum of ten pounds, and for each subsequent conviction a sum double the amount of the penalty imposed for the last preceding conviction, but the highest amount of such penalty shall not in any case exceed the sum of two hundred pounds : Provided always, that the justices may suspend their final determination in any such case, upon condition that the person so complained against shall undertake to adopt, within a reasonable time, such means as the said justices shall judge to be practicable and order to be carried into effect for abating such nuisance, or mitigating or preventing the injurious effects of such effluvia, or shall give notice of appeal in the manner provided by this Act, and shall enter into recognizances to try such appeal, and shall appeal accordingly : Provided always, that the provisions hereinbefore contained shall not extend or be applicable to any place without the limits of any city, town, or populous district.

(*a*) See note (*e*), p. 637, *post*.

(*b*) By Sanitary Act, 1866, section 18, a requisition, &c., under the hands of ten inhabitants, shall be deemed equivalent to certificate here mentioned.

(*c*) Public Health Act, 1875, section 115, empowers urban authority to proceed against any house without the district, and extends the section to the metropolis so far as to authorize proceedings to be taken under it by any nuisance authority in the metropolis. See Slaughter-houses Metropolis Act, 1874 (*ante*), as to blood boilers, &c.

28. Provided also, that if, upon his appearance before such justices, the party complained against object to have the matter determined by such justices, and enter into recognizances, with sufficient sureties to be approved by the justices, to abide the event of any proceedings at law or in equity that may be had against him on account of the subject matter of complaint, the local authority shall thereupon abandon all proceedings before the justices, and shall forthwith take proceedings at law or in equity in Her Majesty's superior courts for preventing or abating the nuisance complained of.

Reference to superior court at the option of the party complained against.

29. Whenever the medical officer of health, if there be one, or if none, whenever two qualified medical practitioners, shall certify to the local authority that any house is so overcrowded as to be dangerous or prejudicial to the health of the inhabitants, and the inhabitants shall consist of more than one family, the local authority shall cause proceedings to be taken before the justices to abate such overcrowding, and the justices shall thereupon make such order as they may think fit, and the person permitting such overcrowding shall forfeit a sum not exceeding forty shillings.

On certificate of medical officer to local authority that house is overcrowded, proceedings may be taken to abate the same.

30. The local authority may, within the area of their jurisdiction, direct any proceedings (*d*) to be taken at law or in equity in cases coming within the purview of this Act, and may order proceedings to be taken for the recovery of any penalties, and for the punishment of any persons offending against the provisions of this Act, or in relation to appeals under this Act, and may order the expenses of all such proceedings to be paid out of the rates or funds administered by them under this Act.

Local authority to order costs of prosecutions to be paid out of the rates.

PART III.

And with regard to procedure under this Act, be it enacted, That

31. Notices, summonses, and orders under this Act may be served by delivering the same to or at the residence of the persons to whom they are respectively addressed, and where addressed to the owner or occupier of premises they may also be served by delivering the same or a true copy thereof to some person upon the premises, or if there be no person upon the premises who can be so served, by fixing the same upon some conspicuous part of the premises, or if the person shall reside at a distance of more than five miles (*e*) from the office of the inspector then by a registered letter through the post.

Service of notices, summonses, and orders.

32. Copies of any orders or resolutions of the local authority or their committee, purporting to be signed by the chairman of such

Proof of resolutions

(*d*) By section 48 of Sanitary Act, 1866, any local board, sewer authority, or nuisance authority may appear before justices, &c., by their clerk or any officer or member authorized generally, or in respect of any special proceedings, by resolution.

(*e*) To be measured in a straight line as the crow flies; *Stokes* v. *Grissell*, 14 C. B. 678; *Lake* v. *Butler*, 24 L. J. Q. B. 273; *Moufflet* v. *Cole*, L. R. 7 Ex. 70.

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of local authority.

body or committee, shall, unless the contrary be shown, be received as evidence thereof, without proof of their meeting, or of the official character or signature of the person signing the same.

As to proceedings taken against several persons for the same offence.

33. Where proceedings under this Act are to be taken against several persons in respect of one nuisance caused by the joint Act or default of such persons, it shall be lawful for the local authority to include such persons in one complaint, and for the justices to include such persons in one summons, and any order made in such a case may be made upon all or any number of the persons included in the summons, and the costs may be distributed as to the justices may appear fair and reasonable.

One or more joint owners or occupiers may be proceeded against alone.

34. In case of any demand or complaint under this Act to which two or more persons, being owners or occupiers of premises, or partly the one or partly the other, may be answerable jointly or in common or severally, it shall be sufficient to proceed against any one or more of them without proceeding against the others or other of them; but nothing herein contained shall prevent the parties so proceeded against from recovering contribution in any case in which they would now be entitled to contribution by law.

Designation of "owner" or "occupier."

35. Whenever in any proceeding under this Act, whether written or otherwise, it shall become necessary to mention or refer to the owner or occupier of any premises it shall be sufficient to designate him as the "owner" or "occupier" of such premises, without name or further description.

Penalty for obstructing execution of this Act. (*a*)

36. Whoever refuses to obey an order of justices under this Act for admission on premises of the local authority or their officers, or wilfully obstructs any person acting under the authority or employed in the execution of this Act, shall be liable for every such offence to a penalty not exceeding five pounds.

Penalty on occupier obstructing owner.

37. If the occupier of any premises prevent the owner thereof from obeying or carrying into effect the provisions of this Act, any justice to whom application is made in this behalf shall by order in writing require such occupier to desist from such prevention, or to permit the execution of the works required to be executed, provided that such works appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within twenty-four hours after the service of such order the occupier against whom it is made do not comply therewith, he shall be liable to a penalty not exceeding five pounds for every day afterwards during the continuance of such noncompliance.

Penalties and expenses recoverable under 11 & 12 Vict. c. 43. (*b*)

38. Penalties imposed by this Act for offences committed and sums of money ordered to be paid under this Act may be recovered by persons thereto competent in England, according to the provisions of the Act of the eleventh and twelfth years of the present reign, chapter forty-three; and all penalties recovered by the local authority

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(*a*) *Re Local Board of Ham*, 26 L. J. M. C. 64; *R.* v. *Jenkins*, 32 L. J. M. C. 1.

(*b*) Sanitary Act, 1866, section 45, imposes penalty of £5 for wilfully damaging works] or property belonging to, among others, any nuisance authority.

under this Act shall be paid to them, to be by them applied in aid of their expenses under this Act.

Proceedings not to be quashed for want of form. (*c*)

39. No order, nor any other proceeding, matter, or thing done or transacted in or relating to the execution of this Act, shall be vacated, quashed, or set aside for want of form, nor shall any order, nor any other proceeding, matter, or thing done or transacted in relation to the execution of this Act, be removed or removable by *certiorari*, or by any other writ or process whatsoever, into any of the superior courts; and proceedings under this Act against several persons included in one complaint shall not abate by reason of the death of any among the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally so included.

Appeals under this Act to be to quarter sessions.

40. Appeals under this Act shall be to the court of quarter sessions held next after the making of the order appealed against; but the appellant shall not be heard in support of the appeal unless within fourteen days after the making of the order appealed against he give to the local authority notice in writing stating his intention to bring such appeal, together with a statement in writing of the grounds of appeal, and shall within two days (*d*) of giving such notice enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the said court, and to abide the order of and pay such costs as shall be awarded by the justices at such court or any adjournment thereof; and the said court, upon hearing and finally determining the matter of the appeal, may, according to its discretion, award such costs to the party appealing or appealed against as they shall think proper, and its determination in or concerning the premises shall be conclusive and binding on all persons to all intents or purposes whatsoever: Provided always, that if there be not time to give such notice and enter into such recognizance as aforesaid, then such appeal may be made to, and such notice, statement, and recognizance be given and entered into for, the next sessions at which the appeal can be heard; provided also, that on the hearing of the appeal no grounds of appeal shall be gone into or entertained other than those set forth in such statement as aforesaid; provided also, that in any case of appeal the court of quarter sessions may, if they think fit, state the facts specially for the determination of Her Majesty's court of Queen's Bench, in which case it shall be lawful to remove the proceedings, by writ of *certiorari* or otherwise, into the said court of Queen's Bench.

Forms to be used as in schedule.

41. The forms contained in the schedule to this Act annexed, or any forms to the like effect, varied as circumstances may require, may be used for instruments under this Act, and shall be sufficient for the purpose intended.

As to protection of local authority and its officers (*e*).

42. The local authority, and any officer or person acting under the authority and in execution or intended execution of this Act, shall be entitled to such protection and privilege in actions and suits, and such exemption from personal liability, as are granted to local

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(*c*) See *R.* v. *Chantrell*, L. R. 10 Q. B. 587.

(*d*) Sunday is counted; *Ex parte Simpkin*, 29 L. J. M. C. 23; *R.* v. *Justices of Middlesex*, 12 L. J. M. C. 59.

(*e*) The provision in force at the passing of this Act was 11 & 12 Vict. c. 63, s. 148. The enactment relative to process against local authorities,

PART III.

Section 42.

boards of health and their officers by the law in force for the time being.

Act not to impair jurisdiction of sewers commissioners, or common law remedies for nuisance, nor jurisdiction of local authority as to the nuisances referred to in this Act.

43. Nothing in this Act shall be construed to affect the provisions of any local Act as to matters included in this Act, nor to impair, abridge, or take away any power, jurisdiction, or authority which may at any time be vested in any commissioners of sewers or of drainage, or to take away or interfere with any course of proceedings which might be resorted to or adopted by such commissioners if this Act had not passed, nor to impair any power of abating nuisances at common law, nor any jurisdiction in respect of nuisances that may be possessed by any authority under the Act intituled "An Act to abate the Nuisances arising from the Smoke of Furnaces in the Metropolis and from Steam Vessels above London bridge," or the Common Lodging Houses Acts, the Act for the regulation of municipal corporations, the Public Health Act, or any improvement Act respectively, or any Acts incorporated with such Acts, and authorities may respectively proceed for the abatement of nuisances or in respect of any other matter or thing hereinbefore provided or referred to either under the Acts mentioned in this section or any other Act conferring jurisdiction in respect of the nuisances referred to in this Act, or any bye-laws framed under any such Act, as they may think fit; and the local authorities constituted under and for the purposes of the Common Lodging House Acts, 1851 and 1853, shall for the purposes of those Acts have all the powers of local authorities under this Act.

Act not to affect navigation of rivers or canals.

44. Nothing herein contained shall enable any local authority, surveyor of highways, or other person, either with or without any order of justices, to injuriously affect the navigation of any river or canal, or to divert or diminish any supply of water of right belonging to any such river or canal; and the provisions of this Act shall not extend or be construed to extend to mines of different descriptions so as to interfere with or obstruct the efficient working of the same, or to the smelting of ores and minerals, or to the manufacturing of the produce of such ores and minerals.

Saving as to rights of millowners, &c.

45. No power given by this Act shall be exercised in such manner as to injuriously affect the supply, quality, or fall of water contained in any reservoir or stream, or any feeders of such reservoir or stream, belonging to or supplying any waterwork established by Act of parliament, or in cases where any company or individual are entitled for their own benefit to the use of such reservoir or stream, or to the supply of water contained in such feeders, without the consent in writing of the company or corporation in whom such waterworks may be vested, or of the parties so entitled to the use of such reservoirs, streams, and feeders, and also of the owners thereof in cases where the owners and parties so entitled are not the same person.

Short title.

46. In citing this Act in other Acts of parliament, and in legal instruments and other proceedings, it shall be sufficient to use the words "The Nuisances Removal Act for England, 1855."

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members, or officers, is now the Public Health Act, 1875, section 264. See *Newton* v. *Ellis*, 5 E. & B. 115; *Read* v. *Coker*, 13 C. B. 850, and the decisions cited in note to section 106 of Metropolis Management Amendment Act, 1862, *ante*.

SCHEDULE OF FORMS.

Form (A.)

Order of Justices for Admission of Officer of Local Authority to inspect private Premises.

Whereas [*describe the local authority*] have by their officer [*naming him*] made application to me, *A.B.*, one of Her Majesty's justices of the peace having jurisdiction in and for [*describe the place*], and the said officer has made oath to me of his belief that a nuisance within the meaning of the Nuisances Removal Act for England, 1855, viz. [*describe nuisance*], exists on private premises at [*describe situation of premises so as to identify them*], within my jurisdiction, and demand of admission to such premises for the inspection thereof has been duly made under the said Act, and refused:

Now, therefore, I, the said *A.B.*, do hereby require you to admit the said [*name the local authority*], [*or* the officer of the said [*local authority*], for the purpose of inspecting the said premises.

Dated this day of 18 .

A.B.

Form (B.)

Notice of Nuisance.

To the local authority [*describing it*].

I [*or* we], the person aggrieved by the nuisance hereinafter described [*or* the undersigned and described inhabitant householders, sanitary inspector, *or other officer* (*describing him*)], do hereby give you notice, that there exists in or upon the [Dwelling House, yard, *etc., as the case may be*], situate at [*giving such description as may be sufficient to identify the premises*], in the parish of in your district, under the Nuisances Removal Act, 1855, the following nuisance, videlicet [*describing the nuisance, as the case may be; for instance,* a dwelling house or building a nuisance or injurious to health for want of a privy *or* drain *or* sufficient means of ventilation, *or* so dilapidated *or* so filthy as to be a nuisance or injurious to health, *or, for further instance,* a ditch *or* drain so foul as to be a nuisance or injurious to health, *or* an accumulation of a nuisance or injurious to health, *&c., or* swine so kept as to be a nuisance or injurious to health]; and that such nuisance is caused by [*naming the person by whose act or default the nuisance is caused, or* by some person unknown].

Dated this day of in the year of our Lord one thousand eight hundred and

[*Signed by complainant under section* 10.]

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FORM (C.)

Notice to Owner or Occupier of Entry for Examination.

To the owner [*or* occupier, *as the case may be,*] of [*describe the premises*] situate at [*insert a description sufficient to identify the premises.*

TAKE notice, that, under the Nuisances Removal Act for England, 1855, the [*local authority, naming it*], in whose district under the said Act the above premises are situate, have received a notice from [*name complainant*], stating that in or upon the said premises [*insert the cause of nuisance as set forth in the notice*].

And further take notice, that after the expiration of twenty-four hours from the service of this notice the [*local authority*] will cause the said premises to be entered and examined under the provisions of the said Act, and if the cause of nuisance aforesaid be found still existing, or, though removed or discontinued, be likely to be repeated, a summons will be issued requiring your attendance to answer a complaint which will be made to the justices for enforcing the removal of the same, and prohibiting a repetition thereof, and for recovering the costs and penalties that may be incurred thereby.

Dated this day of in the year of our lord one thousand eight hundred and

A.B.,
The Officer appointed by the [*local authority*] to take proceedings under the Nuisances Removal Act for England, 1855.

FORM (D.)

Summons.

To the owner *or* occupier of [*describe premises*] situate at [*insert such a description as may be sufficient to identify the premises*], *or* to *A.B.* of

County of [*or* borough of *&c., or* district of *or as the case may be*] to wit. } You are required to appear before two of Her Majesty's Justices of the peace [*or* one of the magistrates of the police courts of the metropolis, *or* the stipendiary magistrate] of the county [*or other jurisdiction*] of at the petty sessions [*or* court] holden at on the day of next, at the hour of in the noon, to answer the complaint this day made to me by [*or* by on behalf of] [*naming the local authority, as the case may be*], that in or upon the premises above mentioned [*or* in or upon certain premises situate at No. in the street in the parish of *or such other description or reference as may be sufficient to identify the premises*], in their district, under the Nuisances Removal Act for England, 1855, the following nuisance exists [*describing it, as the case may be*], and that the said nuisance is caused by the act or default of the occupier [*or* owner] of the said premises *or* by you *A.B.* [*or in case the nuisance be discontinued, but likely to be repeated, say,* there existed recently, to wit, on or about the day of on the premises, the following nuisance [*describe the nuisance*], and that the said nuisance was caused [*&c.*], and although the same has since the said last-mentioned day been removed or discontinued, there is reasonable

ground to consider that the same or the like nuisance is likely to recur on the said premises].

Given under the hand of me, *J.P.*, Esquire, one of Her Majesty's justices of the peace acting in and for the [*jurisdiction*] stated in the margin, *or* one of the magistrates of the police courts of the metropolis, *or* stipendiary magistrate of day of in the year of our Lord one thousand eight hundred and

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FORM (E.)

Order of Justices for Removal of Nuisances by Owner, &c.

To the owner [*or* occupier] of [*describe the premises*] situate [*give such description as may be sufficient to identify the premises*], *or* to *A.B.* of *or* to [*giving name of the local authority,*] or to their servants or agents, and to all whom it may concern.

County of [*or* Borough, *&c.*, of *or* district of *or as the case may be*]. } WHEREAS on the day of complaint was made before Esquire, one of Her Majesty's justices of the peace acting in and for the county [*or other jurisdiction*] stated in the margin, [*or* before the undersigned, one of the magistrates of the police courts of the metropolis, *or as the case may be,*] by [*or* by on behalf of] [*the local authority, naming it, as the case may be*], that in or upon certain premises situate at in the district under the Nuisances Removal Act for England, 1855, of the complainants above named, the following nuisance then existed [*describing it*]; and that the said nuisance was caused by the act or default of the owner [*or* occupier of the said premises [*or* was caused by *A.B.*] (*if the nuisance have been removed, say,* the following nuisance existed on or about [*the day the nuisance was ascertained to exist*], and that the said nuisance was caused, *&c.*, and although the same is now removed, the same or the like nuisance is likely to recur on the same premises.)

And whereas the owner [*or* occupier] within the meaning of the said Nuisances Removal Act, 1855 [*or* the said *A.B.* hath this day appeared before us justices, being two of Her Majesty's justices in and for , sitting in petty sessions at their usual place of meeting, [*or* before me, the said magistrate of the police courts of the metropolis, *or as the case may be,*] to answer the matter of the said complaint [*or in case the party charged do not appear, say,* And whereas it hath been this day proved to our [*or* my] satisfaction that a true copy of a summons requiring the owner [*or* occupier] of the said premises [*or* the said *A.B.*] to appear this day before us [*or* me hath been duly served according to the said Act]:

Now upon proof here had before us [*or* me] that the nuisance so complained of doth exist on the said premises, and that the same is caused by the act or default of the owner [*or* occupier] of the said premises [*or* by the said *A.B.*], we [*or* I], in pursuance of the said Act, do order the said owner [*or* occupier, *or A.B.*] within [*specify the time*] from the service of this order or a true copy thereof according to the said Act [*here specify the works to be done, as, for instance,* to cleanse, whitewash, purify, and disinfect the said dwelling house; *or, for further instance,* to construct a privy *or* drain, *&c.*; *or, for further instance,* to cleanse *or* to cover *or* to fill up the said cesspool, *&c.*], so that the same shall no longer be a nuisance or injurious to health as aforesaid.

[*And if it appear to the justices that the nuisance is likely to recur on the premises, say* [And we] [*or* I] being satisfied that, notwithstanding the said cause or causes of nuisances may be removed under this order, the same is or are likely to recur, do therefore prohibit the said owner [*or*

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occupier, *or A.B.*,] from [*here insert the matter of the prohibition, as, for instance,* from using the said house or building for human habitation until the same, in our judgment, is rendered fit for that purpose].

And if the above order for abatement be not complied with, [*or* if the above order of prohibition be infringed,] then we [*or* I] do authorize and require you the said [*local authority, naming it*] from time to time to enter upon the said premises, and to do all such works, matters, and things as may be necessary for carrying this order into full execution according to the act aforesaid.

In case the nuisance were removed before complaint, say, [Now, upon proof here had before us that at or recently before the time of making the said complaint, to wit, on as aforesaid, the cause of nuisance complained of did exist on the said premises, but that the same hath since been removed, yet notwithstanding such removal, we [*or* I] being satisfied that it is likely that the same or the like nuisance will recur on the said premises, do hereby prohibit, [*order of prohibition*]; and if this order of prohibition be infringed, then we [*or* I] [*order on local authority to do works*].

Given under the hands and seals of us, two of Her Majesty's justices of the peace in and for [*or* the hand and seal of me, one of the magistrates of the police courts of the metropolis, *or as the case may be*], this day of in the year of our Lord one thousand eight hundred and

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FORM (F.)

Order of Justices for Removal of Nuisance by Local Authority.

To the town council, &c., *as the case may be.*

County, &c. to wit. } WHEREAS [*recite complaint of nuisance as in last form.*

And whereas it hath been now proved to our [*or* my] satisfaction that such nuisance exists, but that no owner or occupier of the premises, or person causing the nuisance, is known *or* can be found [*as the case may be*]: Now we [*or* I], in pursuance of the said Act, do order the said [*local authority, naming it,*] forthwith to [*here specify the works to be done*].

Given, &c.

FORM (G.)

Order to permit Execution of Works by Owners.

County of [*or* borough of *or* metropolitan police district, *or as the case may be,*] to wit. } WHEREAS complaint hath been made to me, *E.F.*, Esquire, one of Her Majesty's justices of the peace in and for the county [*or* borough, &c.] of [*or* one of the magistrates of the police courts of the metropolis, *or as the case may be, or* one of Her Majesty's justices of the peace, *as the case may be,* of the county of], by *A.B.*, owner within the meaning of the "Nuisances Removal Act for England, 1855," of certain premises, to wit, a dwelling house [*or* building, *or as the case may be*], situate at [*insert such a description of the premises as may be sufficient to identify them*], in the parish of in the said county [*or* borough, &c.], that *C.D.*, the occupier of the said premises, doth prevent the said *A.B.* from obeying and carrying into effect the provisions of the said Act, in this, to

wit, that he the said *C.D.* [*here describe the act of prevention generally, according to the circumstances; for instance thus,* doth refuse to quit the said house, the same having by the order of justices been declared unfit for human habitation, *or* doth prevent the said *A.B.* from cleansing *or* white-washing *or* purifying the said dwelling house, *or* erecting a privy *or* drain, *or* breaking an aperture for ventilation, *or* cleansing a drain, ditch, gutter, watercourse, privy, urinal, cesspool, *or* ashpit which is a nuisance or injurious to health]: And whereas the said *C.D.* has been summoned to answer the said complaint, and has not shown sufficient cause against the same, and it appears to me that [*describe the act or works to be done*] is necessary for the purpose of enabling the said *A.B.* to obey and carry into effect the provisions of the said Act, I do hereby order that the said *C.D.* do permit the said *A.B.* [*describe the act or works to be done*] in the manner required by the said Act.

Given under my hand and seal, this day of in the year of our Lord one thousand eight hundred and

E.F. (L.S.)

FORM (H.)

Summons for Non-payment of Costs, Expenses, or Penalties. Sect. 20.

To [*describe the person from whom the costs, expenses, and penalties are due*].

County of *or* Borough of *or* District of to wit. } You are required to appear before two of Her Majesty's justices of the peace [*or* one of the magistrates of the police courts of the metropolis, *or* the stipendiary magistrates] of the county [*or other jurisdiction*] of , at the petty sessions [*or* court], holden at , on the day of next, at the hour of in the noon, to answer the complaint this day made to me by [*or* by on behalf of] [*naming the local authority*], that the sum of pounds, being costs and expenses incurred by you under and in relation to a certain complaint touching [*describe the nuisance*], and an order of [*describe the person making the order*] duly made in pursuance of the Nuisances Removal Act for England, 1855 [*if penalties are due, add,* and also the sum of being the amount of penalties payable by you for disobedience of the said order], remains unpaid and due from you.

Given under the hand of me, *J. P.*, esquire, one of Her Majesty's justices of the peace acting in and for the [*jurisdiction stated in the margin*] [*or* one of the magistrates of the police courts of the metropolis, *or* stipendiary magistrate of] the day of , in the year of our Lord one thousand eight hundred and .

FORM (I.)

Order for payment of Costs, Expenses, and Penalties. Sect. 20.

To [*name the person on whom the order is made*]

County, &c., to wit. } WHEREAS complaint has been made before us [*or* me] for that [*recite cause of complaint*].

And whereas the said [*naming the person against whom the complaint is made*] has this day appeared before us the said justices [*or* before me the

Schedules.

said magistrates of the police courts of the metropolis, *or as the case may be*], to answer this matter of the said complaint: [*or, in case the party charged do not appear, say*]

And whereas it has been this day satisfactorily proved to us [*or* me] that a true copy of the summons requiring the said [*naming the person charged*] to appear before us [*or* me] this day hath been duly served according to the said Act: Now, having heard the matter of the said complaint, we [*or* I] do adjudge the said [*naming the person charged*] to pay forthwith [*or* by instalments of , payable respectively on or before the] to the said [*naming the person or local authority to whom the costs adjudged are payable*], the sum of for costs in this behalf, and to [*naming the person or authority to whom the expenses are payable*] the sum of for expenses in this behalf [*if penalties are due, add,* and the sum of for penalties incurred in relation to the premises], together with the sum of being the charges attending the application for this order and proceedings thereon; and if the said several sums, amounting in the whole to [*or* if any one of the said instalments] be not paid within fourteen days after the same is due as aforesaid, we [*or* I] hereby order that the same be levied by distress and sale of the goods and chattels of the said , and in default of sufficient distress in that behalf adjudge the said to be imprisoned in the common gaol [*or* house of correction, *as the case may be*], at , in the said county [*or as the case may be*] for the space of such time, not exceeding three calendar months, as the justices may think fit, unless the said several sums [*or* sum], and all costs and charges of the said distress [and of the commitment and carrying of the said to the said house of correction *or* common gaol, *or as the case may be*], shall be sooner paid.

Given under our [*or* my hands, this day of , in the year of our Lord one thousand eight hundred and , at , in the [county, *or as the case may be*] aforesaid.

FORM (K.)

Warrant of Distress. Sect. 20.

To the constable of and to all other officers in the said county [*or as the case may be*].

WHEREAS on last past complaint was made before the undersigned, two of Her Majesty's justices of the peace in and for the said county of [*or as the case may be*] [*or* a magistrate of the police courts of the metropolis *or* stipendiary magistrate, *as the case may be*] for that [*&c., as in the order*]; and thereupon, having considered the matter of the said complaint, we [*or* I] adjudge the said [*set out from Form K. the adjudication of payment, and the order for distress and for imprisonment in default of distress*]: And whereas the time in and by the said order appointed for the payment of the said several sums of and hath elapsed, but the said hath not paid the same or any part thereof within fourteen days after the date fixed by the order for such payment, but therein hath made default: These are therefore to command you in Her Majesty's name forthwith to make distress of the goods and chattels of the said *A. B.*, and if within the space of days after the making of such distress the said last-mentioned sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale over to the clerk of the justices of the peace for the divison of in the said [county, *or as the case may be*], that he may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said ; and if no such distress

can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain. Schedules.

Given under our [*or* my] hands and seal, this day of , in the year of our Lord one thousand eight hundred and , at , in the [county] aforesaid.

A. B.
(L. S.) *C. D.*

(FORM L.)

Return of Proceedings under Nuisances Removal Act, 1855, *by the* [name the Local Authority at length].

From 25th March, 1855, *to 25th March*, 1856.

Date of Notice.	By whom given.	Nature of Nuisance.	Proceedings taken.	Remarks:—With any special Work done under the Acts without any Notice.
16 April ..	The Inspector....	Foul drainage from house.	Owner put down good drain, on summons, without justice's order.	Several houses being in a like position, the highway surveyor laid down a sewer in the old watercourse, and each house was charged a proportionate sum for the same, of which the highest sum was 10*s*.
18 April ..	Two neighbours ..	Offensive cesspool.	Abated by local authority.	Renewed once; but penalty recovered and no subsequent renewal attempted.

Dated this 26th day of March, 1856. [*To be signed by the chairman of the local authority.*]

AN ACT

TO AMEND THE ACTS FOR THE REMOVAL OF NUISANCES AND THE PREVENTION OF DISEASES (*a*).

23 & 24 VICT. CAP. 77.

6TH AUGUST, 1860.

18 & 19 Vict. cc. 121, and 116.

WHEREAS the provisions of "The Nuisances Removal Act for England, 1855," and "The Diseases Prevention Act, 1855," concerning the local authority for the execution of the said Acts are defective, and it is expedient that the said Acts should be amended as hereinafter mentioned: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

Nuisances Removal.

Sections 3, 6, 7 and 9 of 18 & 19 Vict. c. 121, repealed.

1. Section three, section six, section seven, and section nine of the said "Nuisances Removal Act for England, 1855," shall be repealed: Provided always, that such repeal as aforesaid shall not extend to any charges or expenses already incurred, but the same may be defrayed and recovered, and all proceedings commenced or taken under the said Act, and not yet completed, may be proceeded with, and all contracts under the said Act shall continue and be as effectual, as if this Act had not been passed.

Local authority to execute the Nuisances Removal Act.

2. The following bodies shall respectively be the local authority to execute the said Nuisances Removal Act in the districts hereunder stated in England:

In any place within which the Public Health Act is or shall be in force, the local board of health:

(*a*) This Act is repealed by the Public Health Act, 1875, sched. 5. Part I. except so far as relates to the metropolis.

This Act was amended by 29 & 30 Vict. c. 90 (Sanitary Act, 1866), and Part II. of that Act is, by section 14, to be construed as one with the 18 & 19 Vict. c. 121 (the Nuisances Removal Act for England, 1855), and this Act.

Section 2.

In any other place wherein a council exists or shall exist, the mayor, aldermen, and burgesses by the council, except in the city of London and the liberties thereof, where the local authority shall be the commissioners of sewers for the time being, and except in the city of Oxford and borough of Cambridge, where the local authority shall be the commissioners acting in execution of the Local Improvement Acts in force respectively in the said city and borough:

In any place in which there is no local board of health or council, and where there are or shall be trustees or commissioners under an improvement Act, such trustees or commissioners:

In any place within which there is no such local board of health, council, body of trustees, or commissioners, if there be a board of guardians of the poor for such place, or for any parish or union within which such place is situate, such board of guardians, and, if there be no such board of guardians, the overseers of the poor for such place, or for the parish of which such place forms part.

Highway board or nuisances removal committees now subsisting may be continued so long as they employ sanitary inspectors (*b*).

3. Provided, that in any place where a highway board or "The Nuisances Removal Committee" chosen by the vestry in pursuance of the said Act is subsisting, and at the time of the passing of this Act employs or joins with other local authorities in employing a sanitary inspector or inspectors, such highway board or nuisances removal committee may continue to act, and a like committee may be annually chosen by the vestry for such place in the same manner as if this Act had not been passed; but in case in any year the nuisances removal committee be not chosen for such place in manner provided by the said Act, or if the highway board or committee now subsisting or hereafter chosen fail for two months in any year to appoint or employ a sanitary inspector or inspectors, the authority of such highway board or committee shall cease, and no like committee shall be chosen for such place, and the same body or persons shall thenceforth be the local authority for the place as if no such highway board or committee had been appointed therein.

How expenses of local authority to be defrayed.

4. All charges and expenses incurred by the local authority in executing the said Nuisances Removal Act, and not recovered as therein provided, shall be defrayed as follows; to wit,

Out of general district rates where the local authority is a local board of health:

Out of the borough fund or borough rate where the local authority is the mayor, aldermen, and burgesses by the council:

Provided always, that in the city of Oxford and borough of Cambridge such expenses shall be deemed annual charges and expenses of cleansing the streets of the said city and borough respectively, and shall be so payable:

Out of the rates levied for purposes of improvement under any improvement Act, where the local authority is a body or trustees or commissioners acting in execution of the powers of such an Act:

(*b*) This section is repealed by the 17th section of the Sanitary Act, 1866, but the repealing section is not to extend to any vestry or district board under the Metropolis Local Management Act, 1855, or to any committee appointed by such vestry or district board for the purpose of carrying into effect the nuisances removal Acts or any of them.

Section 4.

Where a board of guardians for a union is such local authority for the whole of such union, such charges and expenses shall be defrayed by means of an addition to be made to the rate for the relief of the poor of the parish or parishes for which the expense has been incurred, and be raised and paid in like manner as money expended for the relief of the poor :

Where the board of guardians for a union is such local authority for two or more places maintaining their own poor, but not for all such places in such union, such charges and expenses shall be paid out of the poor rates of the places aforesaid for which the board is the local authority :

Where the board of guardians for a union is under this Act the local authority for a single place maintaining its own poor, and where the board of guardians for any single place, or the overseers of any such place, or "The Nuisances Removal Committee" continued or chosen as hereinbefore provided in any such place, are under this Act the local authority for such place, such charges and expenses shall be defrayed out of the rates for the relief of the poor thereof :

Where the board of guardians for a union is under this Act the local authority for part only of any place maintaining its own poor, together with the whole of any other such place or part of any other such place, such board shall apportion such charges and expenses between or among any or every such part and any or every such place ; and so much of such charges and expenses as may be apportioned to any or every such place for the whole of which such board is the local authority shall be defrayed out of the rates or funds applicable to the relief of the poor thereof :

So much of any such charges and expenses as may be apportioned to part of a place maintaining its own poor, and any such charges and expenses incurred by any board of guardians or overseers, where such board or overseers are the local authority for part of any such place only, shall be defrayed by means of an addition to be made to the rate for the relief of the poor thereof, and be raised and paid in like manner as money expended for the relief of the poor.

Board of guardians may appoint committees for particular parishes.

5. Provided, that the board of guardians for a union may appoint a committee or committees of their own body, under section five of the said Nuisances Removal Act, to act in and for one or more of the parishes or places for which the board is the local authority ; and every committee so appointed shall have the full power of executing the said Acts in all respects, within the specified place or places for which it is appointed, unless its power be expressly limited by the terms of its appointment ; and the board of guardians shall cause the charges and expenses of every such committee to be paid out of the poor rates of the place or places for which such committee is appointed; and where a committee is so appointed for any such place or places the charges and expenses of the board as local authority for or in respect of the place or places for which a committee is not appointed shall be paid or contributed by such last-mentioned place or places in like manner as the expenses of a committee : provided that where any one such committee is appointed for all the places for which the board is the local authority its charges and expenses shall be contributed and paid in like manner as the charges and expenses of the board would have been contributed and paid if such committee had not been appointed.

Section 6.

Saving for the vestries and district boards of the metropolis.

6. Provided also, that as regards the metropolis, the vestries and district boards under the Act of the session holden in the eighteenth and nineteenth years of her Majesty, chapter one hundred and twenty, within their respective parishes and districts, shall continue and be the local authorities for the execution of the said nuisances removal Act, and their charges and expenses shall be defrayed as if this Act had not been passed.

Wells, &c., belonging to any place vested in local authority, &c. (*a*).

7. All wells, fountains, and pumps provided under section fifty of "The Public Health Act, 1848," or otherwise, for the use of the inhabitants of any place, and not being the property of or vested in any person or corporation other than officers of such place, shall be vested in the local authority under this Act for such place, who shall from time to time cause to be kept in good repair and condition and free from pollution all wells, fountains, and pumps vested in them under this Act, and may also keep in good repair and condition and free from pollution other wells, fountains, and pumps dedicated to or open to the use of the inhabitants of such place.

Penalty for fouling water.

8. If any person do any act whatsoever whereby any fountain or pump is wilfully or maliciously damaged, or the water of any well, fountain, or pump is polluted or fouled, he shall, upon summary conviction of such offence before two justices, forfeit a sum not exceeding five pounds for such offence, and a further sum not exceeding twenty shillings for every day during which such offence is continued after written notice from the local authority in relation thereto; but nothing herein contained shall extend to any offence provided against by section twenty-three of the said "Nuisances Removal Act."

Appointment of inspectors of nuisances.

9. Local authorities under this Act may, for the purposes of the Act, severally appoint or employ inspectors of nuisances, and make such payments as they see fit for the remuneration and expenses of such inspectors.

Diseases Prevention.

Sections 2 and 3 of 18 & 19 Vict. c. 116, repealed.

10. Sections two and three of "The Diseases Prevention Act, 1855," and every other enactment constituting a local authority for the execution of the same Act, or providing for the expenses of the execution thereof, except those contained in the eighteenth and nineteenth of Victoria, chapter one hundred and twenty, the Metropolis Local Management Act, shall be repealed.

Guardians and overseers of the poor to be the local authorities for executing Diseases Prevention Act.

11. The board of guardians for every union, or parish not within an union, in England shall be the local authority for executing the said Diseases Prevention Act in every place within their respective unions and parishes, and in every parish and place in England not within a union, and for which there is no board of guardians, the overseers of the poor shall be the local authority to execute the same Act; and the expenses incurred in the execution of such Act by the board of guardians for a union shall be defrayed out of the common fund thereof, and the expenses of the board of guardians or overseers of the poor of any single parish or place shall be defrayed out of the rates for the relief of the poor of such parish or place; provided that

(*a*) By the Sanitary Act, 1866, the property in wells, &c., vested in the nuisance authority under this section, is vested in the sewer authority where that authority supplies water to its district.

Section 11. every such board of guardians shall, for the execution of the said Act for the prevention of diseases, have the like powers of appointing committees, with the like authority, and where any such committee is appointed the expenses thereof and of the board shall be paid in the same manner, as hereinbefore provided where such a board is the local authority for the execution of the said Nuisances Removal Act; provided also, that any expenses already incurred by any local authority in the execution of the said Act shall be defrayed as if this Act had not been passed; provided, moreover, that in respect of any place where, under this Act, the local authority for executing the nuisances removal Act is any other body than the board of guardians or the overseers of the poor, the privy council, if it see fit, may, in the manner provided for the exercise of its powers under the Public Health Act, 1858, authorize such other body to be, instead of the board of guardians or the overseers of the poor, the local authority for executing the diseases prevention Act; provided also, that as regards the metropolis the vestries and district boards under the Act of the session holden in the eighteenth and nineteenth years of her Majesty, chapter one hundred and twenty, within their respective parishes and districts, shall continue to be the local authorities for the execution of the said "Diseases Prevention Act, 1855," and their charges and expenses shall be defrayed as if this Act had not been passed.

Local authorities may provide carriages for conveyance of infected persons.

12. It shall be lawful for the local authority for executing the said "Diseases Prevention Act" to provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any contagious or infectious disease, and to convey such sick and diseased persons as may be residing within such locality to any hospital or other place of destination, and the expenses thereof shall be deemed to be an expense incurred in executing the said Act.

Justices, on the application of householders, may order the removal of nuisances (*a*).

13. Upon complaint before a justice of the peace by any inhabitant of any parish or place of the existence of any nuisance on any private premises in the same parish or place, such justice shall issue a summons requiring the person by whose Act, default, permission, or sufferance the nuisance arises, or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before two justices in petty sessions assembled at their usual place of meeting, who shall proceed to inquire into the said complaint, and act in relation thereto as in cases where complaint is made by a local authority under section twelve of the said Nuisances Removal Act, and as if the person making the complaint were such local authority: provided always, that it shall be lawful for the said justices, if they see fit, to adjourn the hearing or further hearing of such summons for an examination of the premises where the nuisance is alleged to exist, and to require the admission or authorize the entry into such premises of any constable or other person or persons, and thereupon the person or persons authorized by the order of the justices may enter and act as the local authority might under a like order

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(*a*) When the complaint is made by an inhabitant under this section the notice directed by the 29 & 30 Vict. c. 90, s. 21, in proceeding by a local authority is not requisite: *Cocker* v. *Cardwell*, 33 J. P. 758; L. R. 5 Q.B. 15.

The right of complaint hereby given is extended to nuisances in any parish or place, whether in private or public premises, and may be exercised by any inhabitant in such parish or place, or by any owner of premises situated therein, or by any other person aggrieved or injuriously affected thereby.

Section 13.

made by any justice under section eleven of the said Act: provided also, that the costs in the case of every such application shall be in the discretion of the justices, and payment thereof may be ordered and enforced as in other cases of summary adjudication by justices: any order made by justices under this enactment shall be attended with the like penalties and consequences for disobedience thereof and subject to the like appeal as any order made under section twelve of the said nuisances removal Act, and the justices making such order may thereby authorize any constable or other person or persons to do all Acts for removing or abating the nuisance condemned or prohibited, and for executing such order, in like manner as a local authority obtaining the like order might do under the said Act, and to charge the costs to the person on whom the order is made, as is provided in the case where a like order is obtained and executed by such local authority.

Guardians may procure sanitary reports and pay for the same.

14. The guardians of any union, or parish not within an union, may at any time employ one of their medical officers to make inquiry and report upon the sanitary state of their union or parish, or any part thereof, and pay a reasonable compensation for the same out of their common fund.

Interpretation of terms.

15. The several words used in this Act shall be construed in the same manner as is declared with reference to the same words in the above-cited Act, termed "The Nuisances Removal Act for England, 1855," and all the provisions therein, and in "The Diseases Prevention Act, 1855," contained, shall respectively be applicable to this Act, except so far as they shall be hereby repealed, or be inconsistent with anything herein provided.

Justices not incapable of acting by being members of bodies to execute Nuisances Removal Acts (*b*).

16. No justice of the peace shall, unless objected to at the hearing of any complaint or charge, be deemed incapable of acting in cases other than appeals arising under the said Nuisances Removal Act by reason of his being a member of any body hereby declared to be the local authority to execute the said Act, or by reason of his being a contributor, or liable to contribute, to any rate or fund out of which it is hereby provided that all charges and expenses incurred in executing the said Act, and not recovered as therein provided shall, be defrayed.

(*b*) This section is repealed by 29 & 30 Vict. c. 41, s. 1, and by section 2 of that Act it is enacted, that no justice of the peace shall be deemed incapable of acting in cases under the Nuisances Removal Act or the Act of the 29 & 30 Vict. c. 77, by reason of his being a member of any body declared to be the authority to execute the said Act, or by reason of his being a contributor or liable to contribute to any rate or fund, out of which it is thereby provided that all charges and expenses incurred in executing the said Act, and not recovered as therein provided, shall be defrayed: see as to what disqualifies justice, *R.* v. *Meyer*, L. R. 1 Q. B. D. 173.

The mere possibility of bias in favour of one of the parties does not *ipso facto* void the justice's decision: *R.* v. *Rand*, L. R. 1 Q. B. 230.

A convicting justice under a local Act is not disqualified by reason of being member of a corporation: *Harring* v. *Stockton*, 31 J. P. 420. A justice, a member of a sanitary board, is not competent under section 258 of Public Health Act, 1875, to adjudicate upon a prosecution, which in that capacity he had been a party to instituting; *R.* v. *Justices of Weymouth*, 48 L. J. M. C. 139.

This last Act, 29 & 30 Vict. c. 41, is repealed except so far as relates to the metropolis: see reference to repealing section in note to caption of Nuisances Removal Act for England, 1855, *ante*.

AN ACT

TO AMEND THE NUISANCES REMOVAL ACT FOR ENGLAND, 1855, WITH RESPECT TO THE SEIZURE OF DISEASED AND UNWHOLESOME MEAT (*a*).

26 & 27 VICT. CAP. 117.

28TH JULY, 1863.

WHEREAS the provisions of "The Nuisances Removal Act for England, 1855," with regard to the inspection and seizure of diseased and unwholesome meat, are defective; and it is therefore expedient that the same should be repealed, and that other and more effectual provisions in that behalf should be substituted therefor:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present parliament assembled, and by the authority of the same, as follows:

Section 26 of recited Act repealed.

1. From and after the passing of this Act, the twenty-sixth section of the said Act is repealed.

Power to medical officer of health or inspector of nuisances to inspect any animal, &c.

2. The medical officer of health or inspector of nuisances may at all reasonable times inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour (*b*) exposed for sale, or deposited in any place (*c*) for the purpose of sale or of preparation for sale, and intended for the food of man, the proof that the same was not exposed or deposited for such purpose or purposes, or was not intended for the food of man, resting with the party charged; and in case any such animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour appear to him to be

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(*a*) This Act is repealed by the Public Health Act, 1875, schedule 5, Part I, except so far as relates to the metropolis. See note to title of Nuisances Removal Act, 1855, *ante*.

(*b*) By the Sanitary Law Amendment Act, 1874, extended to "milk," in the same manner as if that word had been introduced after the word "flour," wherever that word occurs in this section.

(*c*) Where two carcases of cows unfit for food were found in a yard at the back of a butcher's house, with a slaughter-house on one side of the yard, the yard was held to be "a place" within this provision; and the word "place" in section 3 is not to be limited to places *ejusdem generis* with "slaughter-house, shop, building, or market;" *Young* v. *Grattridge*, 38 L. J. M. C. 67; L. R. 4 Q. B. 166.

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diseased, or unsound, or unwholesome, or unfit for the food of man, it shall be lawful for such medical officer of health or inspector of nuisances to seize, take, and carry away the same, or direct the same to be seized, taken, and carried away by any officer, servant, or assistant, in order to have the same dealt with by a justice; and if it shall appear to the justice that any such animal, or any of the said articles, is diseased, or unsound or unwholesome, or unfit for the food of man (*d*), he shall order (*e*) the same to be destroyed, or so disposed of as to prevent such animal or articles from being exposed for sale or used for such food; and the person to whom such animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour belongs or did belong at the time of sale or of exposure for sale, or in whose possession or on whose premises the same is found, shall, upon conviction, be liable to a penalty not exceeding twenty pounds for every animal, carcase, or fish, or piece of meat, flesh, or fish, or any poultry or game, or for the parcel of fruit, vegetables, corn, bread, or flour so found, or, at the discretion of the justice, without the infliction of a fine, to imprisonment in the common gaol or house of correction for a term of not more than three calendar months.

Penalty for obstructing medical officer of health, &c.

3. In case any person shall in any manner prevent (*f*) such medical officer of health or inspector of nuisances from entering any slaughter-house, shop, building, market, or other place where such animal carcase, meat, poultry, or fish is kept for the purpose of sale or of preparation for sale, or shall in any manner obstruct or impede him, or his servant or assistant, when duly engaged in carrying the provisions of this Act into execution, such person shall be liable to a penalty not exceeding five pounds.

This and recited Act to be as one Act.

4. This Act and "The Nuisances Removal Act for England, 1855," shall be read and construed together as one Act.

Short title.

5. This Act may be cited for all purposes as "The Nuisances Removal Act for England (Amendment) Act, 1863."

(*d*) To sell or expose for sale things unfit for human food is a nuisance at common law; *Shillito* v. *Thompson*, L. R. 1 Q. B. D. 12.

(*e*) There is an opinion in some quarters that before an order to destroy can be made, the party should be summoned, on the supposed authority of such cases as *Gill* v. *Bright*, 36 J. P. 198; *R.* v. *Cheshire*, 37 J. P. 373; but it is doubtful whether those cases are applicable, and certainly the prevailing practice has been to obtain the order to destroy *ex parte*.

(*f*) Where a butcher refuses to admit the inspector, he is not liable to conviction; *Small* v. *Buckley*, 40 J. P. 119. There must be some actual stoppage; here, the butcher refused to go and open his premises on demand, *Ibid.*

AN ACT

TO AMEND THE LAW RELATING TO THE PUBLIC HEALTH (*a*).

29 & 30 VICT. CAP. 90.

7TH AUGUST, 1866.

WHEREAS it is expedient to amend the law relating to public health:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same as follows:

Preliminary.

Short title of Act.

1. This Act may be cited for all purposes as "The Sanitary Act, 1866."

PART I.

PART I.

Amendment of the Sewage Utilization Act, 1865.

Definition of "sewer authority:" "Lord lieutenant in council."

2. "Sewer authority" in this Act shall have the same meaning as it has in the Sewage Utilization Act, 1865.

The words "lord lieutenant in council" shall mean in this Act the lord lieutenant or any chief governor or chief governors in Ireland acting by and with the consent of Her Majesty's privy council in Ireland.

This part to be construed with 28 & 29 Vict. c. 75.

3. This part of this Act shall be construed as one with the Sewage Utilization Act, 1865, and the expression "The Sewage Utilization Act, 1865," as used in this or any other Act of parliament or other document, shall mean the said Sewage Utilization Act, 1865, as amended by this Act.

Power to sewer authority to

4. Any sewer authority may from time to time, at any meeting specially convened for the purpose, form one or more committee or committees consisting wholly of its own members, or partly of its

(*a*) This Act is repealed by the Public Health Act, 1875, schedule 5, Part I, except so far as relates to the metropolis. See reference to the repeal in note to caption of Nuisances Removal Act, 1855, *ante*. This Act was amended by Sanitary Act, 1868, 31 & 32 Vict. c. 115, *post*.

own members and partly of such other persons contributing to the rate or fund out of which the expenses incurred by such authority are paid, and qualified in such other manner as the sewer authority may determine, and may delegate, with or without conditions or restrictions, to any committee so formed, all or any powers of such sewer authority, and may from time to time revoke, add to, or alter any powers so given to a committee.

form committee of its own members and others. (*b*)

A committee may elect a chairman of its meetings. If no chairman is elected, or if the chairman elected is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting. A committee may meet and adjourn as it thinks proper. The quorum of a committee shall consist of such number of members as may be prescribed by the sewer authority that appointed it, or, if no number be prescribed, of three members. Every question at a meeting shall be determined by a majority of votes of the members present, and voting on that question; and in case of an equal division of votes the chairman shall have a second or casting vote.

The proceedings of a committee shall not be invalidated by any vacancy or vacancies amongst its members.

A sewer authority may from time to time add to or diminish the number of the members or otherwise alter the constitution of any committee formed by it, or dissolve any committee.

A committee of the sewer authority shall be deemed to be the agents of that authority, and the appointment of such committee shall not relieve the sewer authority from any obligation imposed on it by Act of parliament or otherwise.

Formation of special drainage district. (*c*)

5. Where the sewer authority of a district is a vestry, select vestry, or other body of persons acting by virtue of any Act of parliament, prescription, custom, or otherwise as or instead of a vestry or select vestry, it may, by resolution at any meeting convened for the purpose after twenty-one clear days notice affixed to the places where parochial notices are usually affixed in its district, form any part of such district into a special drainage district for the purposes of the Sewage Utilization Act, and thereupon such special drainage district shall, for the purposes of the Sewage Utilization Act, 1865, and the powers therein conferred, be deemed to be a parish in which a rate is levied for the maintenance of the poor, and of which a vestry is the sewer authority, subject, as respects any meeting of the inhabitants thereof in vestry, to the Act of the fifty-eighth year of the reign of King George the Third, chapter sixty-nine, and the Acts amending the same; and any officer or officers who may from time to time be appointed by the sewer authority of such special drainage district for the purpose shall have within that district all the powers of levying a rate for the purpose of defraying the expenses of carrying the said Sewage Utilization Act into effect that they would have if such district were such parish as aforesaid, and such rate were a rate for the relief of the poor, and they were duly appointed overseers of such parish.

Appeal against con-

6. Where the sewer authority of any place has formed a special drainage district in pursuance of this Act, if any number of the

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(*b*) This section is repealed by the 14th section of the Public Health Act, 1872.

(*c*) See Sanitary Act, 1870, section 3, as to signature and affixing of this notice under this provision.

PART I.

Section 6.

stitution of special drainage district.

inhabitants of such place, not being less than twenty, feel aggrieved by the formation of such district, or desire any modification in its boundaries, they may, by petition in writing under their hands, bring their case under the consideration of one of Her Majesty's principal secretaries of state, and the said secretary of state may after due investigation annul the formation of the special drainage district or modify its boundaries as he thinks just.

Evidence of formation of special drainage district.

7. A copy of the resolution of a sewer authority forming a special drainage district shall be published by affixing a notice thereof to the church door of the parish in which the district is situate, or of the adjoining parish if there be no church in the said parish, and by advertising notice thereof in some newspaper published or circulating in the county in which such district is situate; and the production of a newspaper containing such advertisement, or a certificate under the hand of the clerk or other officer performing the duties of clerk for the time being of the sewer authority which passed the resolution forming the district, shall be evidence of the formation of such district, and after the expiration of three months from the date of the resolution forming the district such district shall be presumed to have been duly formed, and no objection to the formation thereof shall be entertained in any legal proceedings whatever.

Power to drain into sewers of sewer authority.

8. Any owner or occupier of premises within the district of a sewer authority shall be entitled to cause his drains to empty into the sewers of that authority on condition of his giving such notice as may be required by that authority of his intention so to do, and of complying with the regulations of that authority in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by the sewer authority to superintend the making of such communications; but any person causing any drain to empty into any sewer of a sewer authority without complying with the provisions of this section shall incur a penalty not exceeding twenty pounds, and it shall be lawful for the sewer authority to close any communication between a drain and sewer made in contravention of this section, and to recover in a summary manner from the person so offending any expenses incurred by them under this section.

Use of sewers by persons beyond district.

9. Any owner or occupier of premises beyond the limits of the district of a sewer authority may cause any sewer or drain from such premises to communicate with any sewer of the sewer authority upon such terms and conditions as may be agreed upon between such owner or occupier and such sewer authority, or in case of dispute may, at the option of the owner or occupier, be settled by two justices or by arbitration in manner provided by The Public Health Act, 1848, in respect of matters by that Act authorized or directed to be settled by arbitration.

As to the drainage of houses.

10. If a dwelling house within the district of a sewer authority is without a drain or without such drain as is sufficient for effectual drainage, the sewer authority may by notice require the owner of such house within a reasonable time therein specified to make a sufficient drain emptying into any sewer which the sewer authority is entitled to use, and with which the owner is entitled to make a communication, so that such sewer be not more than one hundred feet from the site of the house of such owner; but if no such means of drainage are within that distance then emptying into such covered

cesspool or other place not being under any house, as the sewer authority directs; and if the person on whom such notice is served fails to comply with the same, the sewer authority may itself, at the expiration of the time specified in the notice, do the work required, and the expenses incurred by it in so doing may be recovered from such owner in a summary manner.

Supply of water to district of sewer authority.

11. A sewer authority within its district shall have the same powers in relation to the supply of water that a local board has within its district, and the provisions of the sections hereinafter mentioned shall apply accordingly in the same manner as if in such provisions "sewer authority" were substituted for "local board of health" or "local board," and the district in such provisions mentioned were the district of the sewer authority and not the district of the local board; that is to say, the sections numbered from seventy-five to eighty, both inclusive, of The Public Health Act, 1848, sections fifty-one, fifty-two, and fifty-three of The Local Government Act, 1858, and section twenty of The Local Government Act, 1858, Amendment Act, 1861.

The sewer authority may, if it think it expedient so to do, provide a supply of water for the use of the inhabitants of the district by

(1.) Digging wells;

(2.) Making and maintaining reservoirs;

(3.) Doing any other necessary acts;

and they may themselves furnish the same, or contract with any other persons or companies to furnish the same: provided always, that no land be purchased or taken under this clause except by agreement or in manner provided by the Local Government Act, 1858.

Expenses of sewer authority in supplying water.

12. Any expenses incurred by a sewer authority in or about the supply of water to its district, and in carrying into effect the provisions herein-before in that behalf mentioned, shall be deemed to be expenses incurred by that authority in carrying into effect the Sewage Utilization Act, 1865, and be payable accordingly.

Wells, &c., belonging to any place vested in sewer authority, &c. 23 & 24 Vict. c. 77, s. 7.

13. All property in wells, fountains, and pumps, and powers in relation thereto, vested in the nuisance authority by the seventh section of the Act passed in the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter seventy-seven, shall vest in the sewer authority, where the sewer authority supplies water to its district.

PART II.

Amendment of the Nuisances Removal Acts.

Definition of "Nuisances Removal Acts."

14. The expression "Nuisances Removal Acts" shall mean the Acts passed in the years following of the reign of Her present Majesty, that is to say, the one in the session of the eighteenth and nineteenth years, chapter one hundred and twenty-one, and the other in the session of the twenty-third and twenty-fourth years, chapter seventy-seven, as amended by this part of this Act; and this part of this Act shall be construed as one with the said Acts, and all expenses incurred by a nuisance authority in carrying into effect any of the provisions of this part of this Act shall be deemed to be expenses incurred by it in carrying into effect the Nuisances Removal Acts.

Definition of "Nuisance Authority."

15. "Nuisance authority" shall mean any authority empowered to execute the Nuisances Removal Acts.(*a*)

Power of police with respect to nuisances.(*b*)

16. In any place within the jurisdiction of a nuisance authority the chief officer of police within that place, by and under the directions of one of Her Majesty's principal secretaries of state, on its being proved to his satisfaction that the nuisance authority has made default in doing its duty, may institute any proceedings which the nuisance authority of such place might institute with respect to the removal of nuisances: provided always, that no officer of police shall be at liberty to enter any house or part of a house used as the dwelling of any person without such person's consent, or without the warrant of a justice of the peace, for the purpose of carrying into effect this Act.

Section 3 of 23 & 24 Vict. c. 77, repealed.

17. The third section of the said Act of the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty,

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(*a*) By the 34 & 35 Vict. c. 113 (Metropolis Water Act, 1871), s. 32, a water company which has cut off or ceased to supply water under the circumstances therein described, shall, within twenty-four hours thereafter, give to the nuisance authority as herein defined, notice thereof, and see section 33, which enacts that the absence of the prescribed fittings shall be a nuisance within the Nuisances Removal Act, 1855. Where justices acting under the Nuisances Removal Act, 1855, and this Act, imposed penalties in nineteen separate informations for sending forth black smoke on as many different days, with costs on each information, it was decided that each emission of smoke was a separate offence, and the justices had not so exercised their jurisdiction in awarding costs as to call for the interference of the court; *R.* v. *Waterhouse*, L. R. 7 Q. B. 545.

(*b*) The Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 19, enacts that where proceedings are taken under the directions of the local government board under this section by the chief officer of police, he shall be entitled to recover from the authority in default, all expenses he may incur and which shall not be paid by the party proceeded against.

chapter seventy-seven, shall be repealed, and all powers vested in any highway board or "nuisance removal committee" under the Nuisances Removal Acts shall determine, and all property belonging to them for the purposes of the said Nuisances Removal Acts shall, subject to any debts or liabilities affecting the same, be transferred to or vested in the nuisance authority under the said Acts: provided always, that this section shall not extend to any vestry or district board, under the Act of the session of eighteenth and nineteenth years of the reign of Her present Majesty, chapter one hundred and twenty, intituled "An Act for the better Local Management of the Metropolis," or to any committee appointed by such vestry or district board for the purpose of carrying into effect the nuisances removal Acts or any of them.

18 & 19 Vict. c. 120.

Requisition of ten inhabitants equivalent to certificate of medical officer.

18. A requisition in writing under the hands of any ten inhabitants of a place shall for the purposes of the twenty-seventh section of "The Nuisances Removal Act for England, 1855," be deemed to be equivalent to the certificate of the medical officer or medical practitioners therein mentioned,(*c*) and the said section shall be enforced accordingly.

Addition to definition of nuisance.

19. The word "nuisances" under the nuisance removal Acts shall include—

1. Any house or part of a house so overcrowded as to be dangerous or prejudicial to the health of the inmates: (*d*)
2. Any factory, workshop, or workplace not already under the operation of any general Act for the regulation of factories or bakehouses, not kept in a cleanly state, or not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein that are a nuisance or injurious or dangerous to health, or so overcrowded while work is carried on as to be dangerous or prejudicial to the health of those employed therein:
3. Any fireplace or furnace which does not as far as practicable consume the smoke arising from the combustible used in such fireplace or furnace,(*e*) and is used within the district of a nuisance authority for working engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, or gaswork, or in any manufactory or trade process whatsoever:

   Any chimney (not being the chimney of a private dwelling house) sending forth black smoke in such quantity as to be a nuisance:

Provided, first, that in places where at the time of the passing of this Act no enactment is in force compelling fireplaces or furnaces

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(*c*) Viz.: "Any medical officer, or any two qualified medical practitioners."

(*d*) As to overcrowding in a house, so as to be a nuisance, although occupied by only one family: *Guardians of Rye Union* v. *Payne*, 40 J. P. 166. The Public Health Act, 1875, in the analogous provisions, adds the words "whether or not members of the same family."

(*e*) This does not apply to smoke caused by the smelting of ores, which is within the enactment 18 & 19 Vict. c. 121, s. 44; *Norris* v. *Barnes*, 41 L. J. M. C. 144; L. R. 7 Q. B. 537. See as to proof of nuisance from smoke, *Gaskell* v. *Davies*, 30 L. J. 516.

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to consume their own smoke, the foregoing enactment as to fireplaces and furnaces consuming their own smoke shall not come into operation until the expiration of one year from the date of the passing of this Act:

Secondly, that where a person is summoned before the justices in respect of a nuisance arising from a fireplace or furnace which does not consume the smoke arising from the combustible used in such fireplace or furnace, the justices may hold that no nuisance is created within the meaning of this Act, and dismiss the complaint, if they are satisfied that such fireplace or furnace is constructed in such manner as to consume as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom,(*a*) and that such fireplace or furnace has been carefully attended to by the person having the charge thereof.

Duties of nuisance authorities as to inspection of nuisances, &c.

20. It shall be the duty (*b*) of the nuisance authority to make from time to time, either by itself or its officers, inspection of the district, with a view to ascertain what nuisances exist calling for abatement under the powers of the nuisance removal Acts, and to enforce the provisions of the said Acts in order to cause the abatement thereof, also to enforce the provisions of any Act that may be in force within its district requiring fireplaces and furnaces to consume their own smoke; and any justice upon complaint upon oath may make an order to admit the nuisance authority or their officers for these purposes, as well as to ground proceedings under the eleventh section of "The Nuisances Removal Act, 1855."

As to proceedings of nuisance authority under section 12 of 18 & 19 Vict. c. 121.

21. The nuisance authority or chief officer of police shall, previous to taking proceedings before a justice under the twelfth section of the "Nuisances Removal Act, 1855," serve a notice (*c*) on the person by whose act, default, or sufferance the nuisance arises or continues, or, if such person cannot be found or ascertained, on the owner (*d*)

(*a*) See a case under a local Act incorporating the smoke provisions of 10 & 11 Vict. c. 34, where similar words were held to mean "as far as possible, consistently with carrying on the trade for which the furnace is used; *Cooper* v. *Woolley*, 36 L. J. M. C. 27; L. R. 2 Ex. 88. See bill by plaintiff seeking, on ground of nuisance, to stop a long commenced work, dismissed on the facts; *Salvin* v. *North Brancepeth Coal Company*, L. R. 9 Ch. 705. The master is liable for a nuisance from smoke, though it is caused by his servants; *Barnes* v. *Akroyd*, L. R. 7 Q. B. 474. As to continuing nuisance after order to abate, see *R.* v. *Waterhouse*, 41 L. J. M. C. 115.

(*b*) As to proceedings in case of default, see section 49, *post*, and *R.* v. *Cockerell*, L. R. 6 Q. B. 252, cited in note to that section.

(*c*) Where a notice has been served, under this section (21), it is not necessary, to found proceedings under section 12 of Nuisances Removal Act, 1855, that a notice should be issued under section 11 of latter Act; *Amys* v. *Creed*, L. R. 4 Q. B. 122.

Where the complaint is made by an inhabitant under 23 & 24 Vict. c. 77, s. 13, the notice directed by this enactment is not necessary; *Cocker* v. *Cardwell*, 33 J. P. 758.

(*d*) A person who does not receive the rent from the occupier of the premises is not owner within this enactment; *Cook* v. *Montagu*, L. R. 7 Q. B. 418, and see also *Bowditch* v. *Wakefield Local Board*, L. R. 6 Q. B. 567; 36 J. P. 197.

or occupier of the premises on which the nuisance arises, to abate the same, and for that purpose to execute such works and to do all such things as may be necessary within a time to be specified in the notice: provided,

First, that where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner;

Secondly, that where the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act, default, or sufferance of the owner or occupier (*e*) of the premises, then the nuisance authority may itself abate the same without further order, and the cost of so doing shall be part of the costs of executing the nuisances removal Acts, and borne accordingly.

Power to cause premises to be cleansed or otherwise disinfected.

22. If the nuisance authority shall be of opinion, upon the certificate of any legally qualified medical practitioner, that the cleansing and disinfecting of any house or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious or contagious disease, it shall be the duty of the nuisance authority to give notice in writing requiring the owner or occupier of such house or part thereof to cleanse and disinfect the same as the case may require; and if the person to whom notice is so given fail to comply therewith within the time specified in the notice, he shall be liable to a penalty of not less than one shilling and not exceeding ten shillings for every day during which he continues to make default; and the nuisance authority shall cause such house or part thereof to be cleansed and disinfected, and may recover the expenses incurred from the owner or occupier in default in a summary manner; when the owner or occupier of any such house or part thereof as is referred to in this section is from poverty or otherwise unable, in the opinion of the nuisance authority, effectually to carry out the requirements of this section, such authority may, without enforcing such requirements on such owner or occupier, with his consent, at his own expense, cleanse and disinfect such house or part thereof and any articles therein likely to retain infection.

Power to provide means of disinfection.

23. The nuisance authority in each district may provide a proper place, with all necessary apparatus and attendance, for the disinfection of woollen articles, clothing, or bedding which have become infected, and they may cause any articles brought for disinfection to be disinfected free of charge.

Nuisance authorities may provide carriages for conveyance of infected persons.

24. It shall be lawful at all times for the nuisance authority to provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any contagious or infectious disease, and to pay the expense of conveying any person therein to a hospital or place for the reception of the sick or to his own home.

(*e*) See *Humphries* v. *Cousins*, L. R. 2 C. P. D. 239, where a person was held liable for damage done by a drain, though he did not know of its existence; approved in *Firth* v. *Bowling Iron Company*, L. R. 3 C. P. D. 259.

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Penalty on person suffering from infectious disorder entering public conveyance without notifying to driver that he is so suffering.

25. If any person suffering from any dangerous infectious disorder shall enter any public conveyance without previously notifying to the owner or driver thereof that he is so suffering, he shall on conviction thereof before any justice be liable to a penalty not exceeding five pounds, and shall also be ordered by such justice to pay to such owner and driver all the losses and expenses they may suffer in carrying into effect the provisions of this Act; and no owner or driver of any public conveyance shall be required to convey any person so suffering until they shall have been first paid a sum sufficient to cover all such losses and expenses.

Removal of persons sick of infectious disorders, and without proper lodging, in any district.(*a*)

26. Where a hospital or place for the reception of the sick is provided within the district of a nuisance authority, any justice may, with the consent of the superintending body of such hospital or place, by order on a certificate signed by a legally qualified medical practitioner, direct the removal to such hospital or place for the reception of the sick, at the cost of the nuisance authority, of any person suffering from any dangerous contagious or infectious disorder, being without proper lodging or accommodation, or lodged in a room occupied by more than one family, or being on board any ship or vessel.

Places for the reception of dead bodies may be provided at the public expense.

27. Any nuisance authority may (*b*) provide a proper place for the reception of dead bodies, and where any such place has been provided and any dead body of one who has died of any infectious disease is retained in a room in which persons live or sleep, or any dead body which is in such a state as to endanger the health of the inmates of the same house or room is retained in such house or room, any justice may, on a certificate signed by a legally qualified medical practitioner, order the body to be removed to such proper place of reception at the cost of the nuisance authority, and direct the same to be buried within a time to be limited in such order; and unless the friends or relations of the deceased undertake to bury the body within the time so limited, and do bury the same, it shall be the duty of the relieving officer to bury such body at the expense of the poor rate, but any expense so incurred may be recovered by the relieving officer in a summary manner from any person legally liable to pay the expense of such burial.

Places for reception of dead bodies during time required for *post-mortem* examination may be provided.

28. Any nuisance authority may provide a proper place (otherwise than at a workhouse or at a mortuary house as lastly herein-before provided for) for the reception of dead bodies for and during the time required to conduct any *post-mortem* examination ordered by

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(*a*) By the Sanitary Law Amendment Act, 1874 (37 & 38 Vict. c. 89), s. 51, it is enacted that every hospital or place for the reception of the sick which shall be declared by an order of the local government board to be within a convenient distance of the district of any authority for the purposes of that section, shall be deemed to be within the district of such authority; and as to order of justices and penalty for disobedience, see section, *post*.

(*b*) This seems to leave it to the discretion of the nuisance authority to provide mortuaries. The 141st section of the Public Health Act, 1875, after the word *may* in the corresponding enactment, introduces the words "and if required by the local government board *shall*." But this does not apply to the metropolis.

the coroner of the district or other constituted authority, and may make such regulations as they may deem fit for the maintenance, support, and management of such place; and where any such place has been provided, any coroner or other constituted authority may order the removal of the body for carrying out such *post-mortem* examination and the re-removal of such body, such costs of removal and re-removal to be paid in the same manner and out of the same fund as the costs and fees for *post-mortem* examinations when ordered by the coroner.

Power to remove to hospital sick persons brought by ships.

29. Any nuisance authority may, with the sanction of the privy council, signified in manner provided by "The Public Health Act, 1858," lay down rules for the removal to any hospital to which such authority is entitled to remove patients, and for keeping in such hospital so long as may be necessary any persons brought within their district by any ship or boat who are infected with a dangerous and infectious disorder, and they may by such rules impose any penalty not exceeding five pounds on any person committing any offence against the same.

Provision as to district of nuisance authority extending to places where ships are lying.

30. For the purposes of this Act any ship, vessel, or boat that is in a place not within the district of a nuisance authority shall be deemed to be within the district of such nuisance authority as may be prescribed by the privy council, and until a nuisance authority has been prescribed then of the nuisance authority whose district nearest adjoins the place where such ship, vessel, or boat is lying, the distance being measured in a straight line, but nothing in this Act contained shall enable any nuisance authority to interfere with any ship, vessel, or boat that is not in British waters.

Power of entry to nuisance authority or their officer under section 11 of 18 & 19 Vict. c. 121.

31. The power of entry given to the authorities by the eleventh section of the Nuisances Removal Act, 1855, may be exercised at any hour when the business in respect of which the nuisance arises is in progress or is usually carried on. (*c*)

And any justices order once issued under the said section shall continue in force until the nuisance has been abated, or the work for which the entry was necessary has been done.

Provision as to ships within the jurisdiction of nuisance authority.

32. Any ship or vessel lying in any river, harbour, or other water shall be subject to the jurisdiction of the nuisance authority of the district within which such river, harbour, or other water is, and be within the provisions of the Nuisances Removal Acts, in the same manner as if it were a house within such jurisdiction, and the master or other officer in charge of such ship shall be deemed for the purposes of the Nuisances Removal Acts to be the occupier of such ship or vessel; but this section shall not apply to any ship or vessel belonging to Her Majesty or to any foreign government.

Provision for raising money in divided parishes.

33. Where the guardians are the nuisance authority for part of any parish only, and shall require to expend money on account of such part in execution of the provisions of the said Acts, the overseers of the parish shall upon receipt of an order from the said guardians, raise the requisite amount from the persons liable to be assessed

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(*c*) The 11th section of the Nuisances Removal Act, 1855, authorizes an entry at any hour between 9 a.m and 6 p.m.

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Section 33.

to the poor rate therein by a rate to be made in like manner as a poor rate, and shall have all the same powers of making and recovering the same, and of paying the expense of collecting the rate when made, and shall account to the auditor of the district for receipt and disbursement of the same, in like manner, and with the same consequences, as in the case of the poor rate made by them.

Nuisance authority may require payment of costs or expenses from owner or occupier, and occupier paying to deduct from rent (*a*).

34. That it shall be lawful for the nuisance authority, at their discretion, to require the payment of any costs or expenses (*b*) which the owner of any premises may be liable to pay under the said Nuisances Removal Acts or this Act, either from the owner or from any person who then or at any time thereafter occupies such premises, and such owner or occupier (*c*) shall be liable to pay the same, and the same shall be recovered in manner authorized by the Nuisance Removal Acts, and the owner shall allow such occupier to deduct the sums of money which he so pays out of the rent from time to time becoming due in respect of the said premises, as if the same had been actually paid to such owner as part of such rent: Provided always, that no such occupier should be required to pay any further sum than the amount of rent for the time being due from him, or which, after such demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuse, on application being made to him for that purpose by or on behalf of the nuisance authority, truly to disclose the amount of his rent and the name and address of the person to whom such rent is payable, but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie upon such occupier; provided also, that nothing herein contained shall be taken to affect any contract made or to be made between any owner or occupier of any house, building, or other property whereof it is or may be agreed that the occupier shall pay or discharge all rates, dues, and sums of money payable in respect of such house, building, or other property, or to affect any contract whatsoever between landlord or tenant.

(*a*) See Nuisances Removal Act, 1855, ss. 7 and 19, as to costs and expenses.

(*b*) The Public Health Act, 1872, section 20 (repealed by the Public Health Act, 1875, except so far as relates to the metropolis) is extended to the port of London, but the Lord Mayor, &c., of the city of London shall be deemed to be the sanitary authority of the port of London, and shall pay out of their corporate funds all their expenses as such port sanitary authority.

(*c*) Under Nuisances Removal Act, 1855, and this Act, it was held that defendant was not owner, as he did not receive the rent from the occupier, *Cook* v. *Montagu*, 41 L. J. M. C. 140; L. R. 7 Q. B. 418. Under section 96 of 25 & 26 Vict. c. 102 (Metropolis Management Amendment Act, 1862), containing similar words, it was held that an unsatisfied judgment against the owner did not bar an action against the occupier for the same expenses; *Vestry of Bermondsey* v. *Ramsey*, L. R. 6 C. P. 247. As to proceedings against the subsequent owner, see *Plumstead Board of Works* v. *Ingoldby*, L. R. 8 Ex. 174.

PART III.

Miscellaneous.

In cities, boroughs, or towns, secretary of state, on application of nuisance authority, may empower them to make regulations as to lodging houses.

35. On application to one of Her Majesty's principal secretaries of state by the nuisance authority of the city of London, or any district or parish included within the Act for the better local government of the metropolis, or of any municipal borough, or of any place under the Local Government Act, 1858, or any local improvement Act, or of any city or town containing, according to the census for the time being in force, a population of not less than five thousand inhabitants, the secretary of state may, as he may think fit, by notice to be published in the London Gazette, declare the following enactment to be in force in the district of such nuisance authority, and from and after the publication of such notice the nuisance authority shall be empowered to make regulations for the following matters; that is to say,

1. For fixing the number of persons who may occupy a house or part of a house which is let in lodgings or occupied by members of more than one family:
2. For the registration of houses thus let or occupied in lodgings:
3. For the inspection of such houses, and the keping the same in a cleanly and wholesome state:
4. For enforcing therein the provision of privy accommodation and other appliances and means of cleanliness in proportion to the number of lodgings and occupiers, and the cleansing and ventilation of the common passages and staircases:
5. For the cleansing and lime-whiting at stated times of such premises:

The nuisance authority may provide for the enforcement of the above regulations by penaties not exceeding forty shillings for any one offence, with an additional penalty not exceeding twenty shillings for every day during which a default in obeying such regulations may continue; but such regulations shall not be of any validity unless and until they shall have been confirmed by the secretary of state.

But this section shall not apply to common lodging houses within the provisions of the Common Lodging Houses Act, 1851, or any Act amending the same.

Cases in which two convictions have occurred within three months.

36. Where two convictions against the provisions of any Act relating to the overcrowding of a house, or the occupation of a cellar as a separate dwelling place, shall have taken place within the period of three months, whether the persons so convicted were or were not the same, it shall be lawful for any two justices to direct the closing of such premises for such time as they may deem necessary, and, in the case of cellars occupied as aforesaid, to empower the nuisance authority to permanently close the same, in such manner as they may deem fit, at their own cost.

Power to pro-

37. The sewer authority, or in the metropolis the nuisance

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Section 37.
vide hospitals (*a*).

authority, may provide for the use of the inhabitants within its district hospitals or temporary places for the reception of the sick.

Such authority may itself build such hospitals or places of reception, or make contracts for the use of any existing hospital or part of a hospital, or for the temporary use of any place for the reception of the sick.

It may enter into any agreement with any person or body of persons having the management of any hospital for the reception of the sick inhabitants of its district, on payment by the sewer authority of such annual or other sum as may be agreed upon.

The carrying into effect this section shall in the case of a sewer authority be deemed to be one of the purposes of the said Sewage Utilization Act, 1865, and all the provisions of the said Act shall apply accordingly.

Two or more authorities having respectively the power to provide separate hospitals may combine in providing a common hospital, and all expenses incurred by such authorities in providing such hospital shall be deemed to be expenses incurred by them respectively in carrying into effect the purposes of this Act.

Penalty on any person, with infectious disorder, exposing himself, or on any person in charge of such sufferer causing such exposure.

38. Any person suffering from any dangerous infectious disorder who wilfully exposes himself, without proper precaution against spreading the said disorder, in any street, public place, or public conveyance, and any person in charge (*b*) of one so suffering who so exposes the sufferer, and any owner or driver of a public conveyance who does not immediately provide for the disinfection of his conveyance after it has, with the knowledge of such owner or driver, conveyed any such sufferer, and any person who without previous disinfection gives, lends, sells, transmits, or exposes any bedding, clothing, rags, or other things which have been exposed to infection from such disorders (*c*), shall, on conviction of such offence before any justice, be liable to a penalty not exceeding five pounds: Provided that no proceedings under this section shall be taken against persons transmitting with proper precautions any such bedding

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(*a*) By 31 & 32 Vict. c. 115, s. 10, the nuisance authority in the metropolis shall have the like power as contained in this section, for the temporary supply of medicine and medical assistance for the poorer inhabitants; but such power shall not be exercised without sanction of the privy council.

(*b*) See *Tunbridge Wells Local Board of Health* v. *Bisshopp*, L. R. 2 C. P. D. 187, as to circumstances under which a surgeon was held not liable to a penalty under section 126 of Public Health Act, 1875, as being in charge of and exposing a person suffering from an infectious disorder; see *Best* v. *Staff*, Q. B. M. T. 1872, referred to in Lumley's Public Health Act, 1875, p. 105, note (*n*), where a person knowingly took a child recovering from small pox to a lodging at the sea side without communicating the fact.

It is an indictable offence to expose unnecessarily, persons affected with the small pox in the public streets; *R.* v. *Burnett*, 4 M. & S. 272; *R.* v. *Vantandillo*, 4 M. & S. 73; referred to in Lumley's Public Health Act, 1875, p. 105, note (*n*).

(*c*) By the Sanitary Law Amendment Act, 1874, section 52, the 51st and 52nd sections of the Public Health Act, 1872, shall apply to the metropolis. The sections provide for the destruction of bedding, clothing, &c., which have been exposed to infection from any dangerous infectious disorder.

clothing, rags, or other things for the purpose of having the same disinfected.

39. If any person knowingly lets any house, room, or part of a house in which any person suffering from any dangerous infectious disorder has been to any other person without having such house, room, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a qualified medical practitioner as testified by a certificate given by him, such person shall be liable to a penalty not exceeding twenty pounds. For the purposes of this section the keeper of an inn shall be deemed to let part of a house to any person admitted as a guest into such inn.

Penalty on persons letting houses in which infected persons have been lodging.

40. Where in any place two or more boards of guardians or local authorities have jurisdiction, the privy council may, by any order made under the Diseases Prevention Act, 1855, authorize or require such boards to act together for the purposes of that Act, and may prescribe the mode of such joint action and of defraying the costs thereof.

Guardians, &c., of the poor to be the local authorities for executing Diseases Prevention Act.

41. In any proceedings under the Common Lodging Houses Act, 1851, if the inmates of any house or part of a house allege that they are members of the same family, the burden of proving such allegation shall lie on the persons making it.

Evidence of family in case of overcrowded houses.

42. The sixty-seventh section of the Public Health Act, 1848, relating to cellar dwellings, shall apply to every place in England and Ireland where such dwellings are not regulated by any other Act of parliament, and in applying that section to places where it is not in force at the time of the passing of this Act the expression "this Act" shall be construed to mean the "Sanitary Act, 1866," and not the said Public Health Act, 1848. In construing the said sixty-seventh section as applied by this Act nuisance authority shall be substituted for the local board.

Extension to the whole of England and Ireland of section 67 of 11 & 12 Vict. c. 63 (*d*).

43. Local boards acting in execution of the local government Act, 1858, may adopt the Act to Encourage the Establishment of Public Baths and Washhouses, and any Act amending the same, for districts in which those Acts are not already in force, and when they have adopted the said Acts they shall have all the powers, duties, and rights of commissioners under the said Acts; and all expenses incurred by any local board in carrying into execution the Acts referred to in this section shall be defrayed out of the general district rates, and all receipts by them under the said Acts shall be carried to the district fund account.

Local board in certain cases may adopt Baths and Washhouses Acts.

44. When the district of a burial board is conterminous with the district of a local board of health, the burial board may, by resolution of the vestry, and by agreement of the burial board

Power to burial boards in certain

(*d*) See Metropolis Management Act, 1855, section 103, *ante*, as to cellar dwellings. The Public Health Act, 1875, repealed the Public Health Act, 1848, and by section 71 of the Act of 1875, "it shall not be lawful to let or occupy or suffer to be occupied separately as a dwelling any *cellar* (including, for the purposes of this Act, in that expression any vault, or underground room) built or rebuilt after the passing of this Act, or which is not lawfully so let or occupied at the time of the passing of this Act."

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Section 44.

cases to transfer their powers to local board.

and local board, transfer to the local board all their estate, property, rights, powers, duties, and liabilities, and from and after such transfer the local board shall have all such estate, property, rights, powers, duties, and liabilities as if the local board had been appointed a burial board by order in council under the fourth section of the Act of the session of the twentieth and twenty-first years of the reign of Her present Majesty, chapter eighty-one.

Penalty for wilful damage of works.

45. If any person wilfully damages any works or property belonging to any local board, sewer authority, or nuisance authority, he shall be liable to a penalty not exceeding five pounds.

Incorporation of sanitary authorities (*a*).

46. The following bodies, that is to say, local boards, sewer authorities, and nuisance authorities, if not already incorporated, shall respectively be bodies corporate designated by such names as they may usually bear or adopt, with power to sue and be sued in such names, and to hold lands for the purposes of the several Acts conferring powers on such bodies respectively in their several characters of local boards, sewer authorities, or nuisance authorities.

Extent of authority to make provisional orders respecting lands under sect. 75 of 21 & 22 Vict. s. 98.

47. The authority conferred on one of Her Majesty's principal secretaries of state by section seventy-five of the Local Government Act, 1858, to empower by provisional order a local board to put in force, with reference to the land referred to in such order, the powers of the Land Clauses Consolidation Act, 1845, with respect to the purchase and taking of lands otherwise than by agreement, shall extend and apply and shall be deemed to have always extended and applied to every case in which, by the Public Health Act, 1848, and the Local Government Act, 1858, or either of them, or any Act extending or amending those Acts, or either of them, a local board are authorized to purchase, provide, use, or take lands or premises for any of the purposes of the said Acts, or either of them, or of any such Act as aforesaid; and sections seventy-three and eighty-four of the Public Health Act, 1848, shall be construed as if the words "by agreement" therein respectively used had been expressly repealed by section seventy-five of the Local Government Act, 1858.

Appearance of local authorities in legal proceedings (*b*).

48. Any local board, sewer authority, or nuisance authority may appear before any justice or justices, or in any legal proceeding, by its clerk or by any officer or member authorized generally or in respect of any special proceeding by resolution of such board or authority, and such person being so authorized shall be at liberty to institute and carry on any proceeding which the nuisance authority is authorized to institute and carry on under the Nuisance Removal Acts or this Act.

Mode of pro-

49. Where complaint is made to one of Her Majesty's principa

(*a*) By the Metropolis Local Management Act, 1855, section 134, *ante*, vestries and district boards are to be the local authorities to execute the Nuisances Removal Acts.

(*b*) On complaint to justices for infringement of a byelaw of a local board, held they were not bound to adjudicate, unless the clerk of the board attended either personally, or by counsel or attorney; *ex parte Leamington* 26 J. P. 84.

secretaries of state that a sewer authority or local board of health has made default in providing its district with sufficient sewers, or in the maintenance of existing sewers, or in providing its district with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost, or that a nuisance authority has made default in enforcing the provisions of the Nuisance Removal Acts (*d*), or that a local board has made default in enforcing the provisions of the Local Government Act, the said secretary of state, if satisfied after due inquiry made by him that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of its duty in the matter of such complaint (*e*), and if such duty is not performed by the time limited in the order, the said secretary of state shall appoint some person to perform the same, and shall by order direct that the expenses (*f*) of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default; and any order made for the payment of such costs and expenses may be removed into the court of Queen's Bench, and be enforced in the same manner as if the same were an order of such court.

Proceeding where sewer authority has made default in providing sufficient sewers, &c. (*e*).

50. All expenses incurred by a sewers authority or local board in giving a supply of water to premises under the provisions of the seventy-sixth section of the Public Health Act, 1848, or the fifty-first section of the Local Government Act, 1858, and recoverable from the owners of the premises supplied, may be recovered in a summary manner.

Recovery of certain expenses of water supply.

51. All penalties imposed by the Act of the sixth year of King George the fourth, chapter seventy-eight, intituled "An Act to repeal the several Laws relating to quarantine, and to make other provisions in lieu thereof," may be reduced by the justices or court having jurisdiction in respect of such penalties to such sum as the justices or court think just.

Power to reduce penalties imposed by 6 Geo. 4, c. 78.

(*c*) An order under this enactment, requires the sewer authority to commence the works within a stated period, and a subsequent order reciting default and appointing a person to do the work, was held to be valid, *R.* v. *Cockerell*, L. R. 6 Q. B. 252; 40 L. J. M. C. 153.

(*d*) By the Sanitary Act, 1868, 31 & 32 Vict. c. 115, s. 8, it is provided that the sum specified in the order of the secretary of state, together with costs of proceedings, shall be deemed to be expenses incurred by the authority in default, and to be a debt due from such authority; and see enactment, *post*.

By the Sanitary Loans Act, 1869, the public works loan commissioners may advance money to secretary of state for purpose of defraying any expenses incurred in the performance of the duty of a defaulting local authority; see note to section 8 of Sanitary Act, 1868, *post*.

(*e*) By Public Health Act, 1875, section 299, where a local government board have made an order under this section, the order may be enforced by *mandamus* notwithstanding the provision for the performance of the duty, in the event of the continued default of sanitary authority.

(*f*) The corresponding section of the Public Health Act, 1875 (s. 299), empowers the local government board to enforce their order by *mandamus*, or by the appointment of a person to perform the duty.

Part III.

Section 51.

Description of vessels within provisions of 6 Geo. 4, c. 78 (*a*).

52. Every vessel having on board any person affected with a dangerous or infectious disorder shall be deemed to be within the provisions of the Act of the sixth year of King George the Fourth, chapter seventy-eight, although such vessel has not commenced her voyage, or has come from or is bound for some place in the United Kingdom; and the lords and others of Her Majesty's most honourable privy council, or any three or more of them (the lord president of the council or one of Her Majesty's principal secretaries of state being one), may, by order or orders to be by them from time to time made, make such rules, orders, and regulations as to them shall seem fit, and every such order shall be certified under the hand of the clerk in ordinary of Her Majesty's privy council, and shall be published in the London Gazette, and such publication shall be conclusive evidence of such order (*b*) to all intents and purposes; and such orders shall be binding and be carried into effect as soon as the same shall have been so published, or at such other time as shall be fixed by such orders, with a view to the treatment of persons affected with cholera and epidemic, endemic, and contagious disease, and preventing the spread of cholera and such other diseases as well on the seas, rivers and waters of the United Kingdom, and on the high seas within three miles of the coasts thereof, as on land; and to declare and determine by what nuisance authority or authorities such orders, rules, and regulations shall be enforced and executed; and any expenses incurred by any such nuisance authority or authorities shall be deemed to be expenses incurred by it or them in carrying into effect the Nuisances Removal Acts.

Periodical removal of manure in mews, &c.

53. Where notice has been given by the nuisance authority, or their officer or officers, for the periodical removal of manure or other refuse matter from mews, stables, or other premises (whether such notice shall be by public announcement in the locality or otherwise), and subsequent to such notice the person or persons to whom the manure or other refuse matter belongs shall not so remove the same, or shall permit a further accumulation, and shall not continue such periodical removal at such intervals as the nuisance authority, or their officer or officers, shall direct, he or they shall be liable, without further notice, to a penalty of twenty shillings per day for every day during which such manure or other refuse matter shall be permitted to accumulate, such penalty to be recovered in a summary manner: Provided always, that this section shall not apply to any place where the board of guardians or overseers of the poor are the nuisance authority.

Recovery of penalties.

54. Penalties under this Act, and expenses directed to be recovered in a summary manner, may be recovered before two justices in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the performance of the Duties of Justices of the Peace out of Sessions within England

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(*a*) This provision is re-enacted in the third part of Sched. 5 to the Public Health Act, 1875, which repeals this Act to the extent specified in Part I. of same schedule, except so far as relates to the metropolis.

By the Public Health Act, 1875, section 291, the Corporation of London are the Port Sanitary Authorities for the city of London.

(*b*) *Quære*, whether these rules and regulations are still in force: see Lumley's Public Health Act, 1875, p. 108, note (*b*).

and Wales with respect to Summary Convictions and Orders," or any Act amending the same.

Powers of Act cumulative.

55. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any local authority by Act of parliament, law, or custom, and such authority may exercise such other powers in the same manner as if this Act had not passed (*c*).

SECOND SCHEDULE.

Statutes Repealed.

Local Boards of Health Act for Ireland, 1818 ; statute 58 Geo. 3, c. 47, ss. 10 to 15 inclusive.

Officers of Health Act for Ireland, 1819 ; statute 59 Geo. 3, c. 41.

Nuisance Removal and Disease Prevention Act, 1848.

Nuisance Removal and Disease Prevention Act, 1849.

(*c*) The 4th part of the Act, except the second schedule, applies exclusively to Ireland.

AN ACT

TO AMEND THE SANITARY ACT, 1866 (*a*).

31 & 32 VICT. CAP. 115.

31ST JULY, 1868.

29 & 30 Vict. c. 90.

WHEREAS it is expedient to make further provision for the removal of refuse matter from dwelling-houses, and to amend the Sanitary Act, 1866:—

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :—

Short title.

1. This Act may be cited for all purposes as the Sanitary Act, 1868.

Application of Act.

2. This Act shall not extend to Scotland or Ireland.

Definition of "sewer authority."

3. "Sewer authority in this Act shall have the same meaning as it has in the Sewage Utilization Act, 1865.

Power to sewer authority in relation to privies.

4. The following sections of the Public Health Act, 1848, as amended by any subsequent Act of parliament, that is to say.

(1.) The fifty-first section, requiring every new house and every house pulled down to or below the ground floor and rebuilt to have a sufficient watercloset or privy and ashpit :

(2.) And the fifty-fourth section as amended by any subsequent Act of parliament, providing that the local board of health shall see that drains, waterclosets, privies, and ashpits within their district do not become a nuisance ;

shall extend to the district of every sewer authority in which there is no enactment of any public or private Act of parliament to the like effect in force ; and the said sections when so extended shall be construed in reference to the district of any sewer authority as if the expression "sewer authority" were inserted therein in the place of the expression "local board," and any officer for the time being appointed by the sewer authority to examine any premises shall

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(*a*) This Act is repealed by the Public Health Act, 1875, Sched. 5 Part I., except so far as relates to the metropolis.

Section 4.

be deemed to be the surveyor within the meaning of the said sections.

Where the sewer authority and the nuisance authority of a district are different bodies of men, the jurisdiction of the nuisance authority shall cease within such district in relation to all matters within the purview of the said sections of the Public Health Act, 1848; and any sewer authority to whose district the said sections are extended making default in enforcing their provisions shall be subject to proceedings under the Sanitary Act, 1866, in the same manner as if it had made default in providing its district with sufficient sewers.

Power of sewer authorities to sewerage.

5. A sewer authority shall within their district have all the powers vested in a local board by the thirty-second section of the Local Government Act, 1858, as amended by any subsequent Act of parliament, so far as relates to—

(1.) The removal of house refuse from premises;

(2.) The cleansing of privies, ashpits, and cesspools;

and the paragraphs numbered (1), (2), and (3) of the said section shall be construed in reference to the district of any sewer authority as if the expression "sewer authority" were inserted therein in the place of the expression "local board."

Where the sewer authority and the nuisance authority are different bodies of men, the jurisdiction of the nuisance authority in such district shall cease in respect to all matters over which the sewer authority acquires power by this section.

Incorporation of provisions of 11 & 12 Vict. c. 63, as to private improvement expenses.

6. The provisions of the Public Health Act, 1848, relating to private improvement expenses, as amended by any subsequent Act of parliament, shall be deemed to be incorporated with this Act, so far as may be required for carrying into effect any provision of this Act.

Earthclosets may in certain cases be constructed instead of watercloset.

7. Any enactment of any Act of parliament in force in any place requiring the construction of a watercloset shall, with the approval of the local authority, be satisfied by the construction of an earthcloset, or other place for the reception and deodorization of fæcal matter, made and used in accordance with any regulation from time to time issued by the local authority.

The local authority may as respects any houses in which such earthclosets or other places as aforesaid are in use with their approval, dispense with the supply of water required by any contract or enactment to be furnished to the watercloset in such houses, on such terms as may be agreed upon between such authority and the persons or body of persons providing or required to provide such supply of water.

The local authority may themselves undertake or contract with any person to undertake a supply of dry earth or other deodorizing substance to any house or houses within their district for the purpose of any earthclosets or other places as aforesaid.

The local authority may themselves construct or require to be constructed earthclosets or other such places as aforesaid in all cases where, under any enactment in force, they might construct watercloset or privies, or require the same to be constructed, with this restriction, that no person shall be required to construct an earthcloset or other place, as aforesaid in any house instead of a watercloset if he prefer to comply with the provisions of the enactment in force requiring the construction of a watercloset, and a supply of

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water for other purposes is furnished to such house, and that no person shall be put to greater expense in constructing an earthcloset or other place as aforesaid than he would be put to by compliance with the provisions of any enactment as to waterclosets or privy accommodation which he might have been compelled to comply with if this section had not been passed.

Local authority shall, for the purposes of this Act, mean any local board and any sewer authority.

Provision for recovery of expenses by secretary of state (*a*).

8. Whereas by the forty-ninth section of the Sanitary Act, 1866, power is given to one of her Majesty's principal secretaries of state in case of any sewer authority, local board, or nuisance authority making default in performing the sanitary duties specified in the said section, and imposed on them by Act of parliament, to appoint a person to perform the same, and to direct by order that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default, and that any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, and be enforced in the same manner as if the same were an order of such court: And whereas it is expedient to make further provision for enforcing payment of any sum so specified as aforesaid in the order of the secretary of state, together with the costs of the proceedings occasioned by the default made in payment of such sum:

Be it enacted, that the sum so specified in the order of the secretary of state, together with the costs of the proceedings, shall be deemed to be expenses properly incurred by the authority in default

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(*a*) By 32 & 33 Vict. c. 100 (repealed except as to the metropolis), the secretary of state is empowered from time to time to certify under his hand, the amount of expenses incurred, or an estimate of the expense about to be incurred by any person appointed by him for the purpose of performing the duty of a defaulting local authority. Also the amount of any loan required for either of the purposes herein mentioned, and such certificate shall be conclusive as to the matters to which it refers.

Section 5. Public works loans commissioners may advance to the secretary of state, or any person appointed by him, the amount of the loan so certified, and the secretary of state, or the person so appointed, may, by instrument under his hand, charge the local rate with the repayment of the principal and interest in respect of such loan. Certificate of secretary of state conclusive evidence that all the requirements of the 49th section of the Sanitary Act, 1866, and any other enactment relating thereto, have been complied with.

Section 6. Principal money and interest may be enforced in addition to other remedies, in manner provided by 8th section of Sanitary Act, 1868.

Section 7. Overplus (if any) to be paid to the defaulting authority.

Section 8. Secretary of state may change person appointed in default of local authority.

Section 9. As to costs of inquiries or proceedings.

Section 10. Definition of expenses.

By 33 & 34 Vict. c. 53 (Sanitary Act, 1870), section 2:—For purposes of 26th section of Sanitary Act, 1866, every hospital or place for the reception of sick within the metropolis deemed to be within the district of every nuisance authority in the metropolis.

See Public Health Act, 1872, s. 34, as to transfer of certain powers and duties of secretary of state to local government board. This act is repealed by the Public Health Act, 1875, but this (the 34th) section is re-enacted by the same act, section 343, and sched. 5, part 3.

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and to be a debt due from such authority, and payable out of any moneys in the hands of such authority or their officers, or out of any rate applicable to the payment of any expenses properly incurred by the defaulting authority, and which rate is in this section referred to as the local rate; and in the event of any authority refusing to pay any such sum with costs as aforesaid within a period of fourteen days after demand, the secretary of state may by precept empower any person to levy by and out of the local rate such sum (the amount to be specified in the precept) as may, in the opinion of the said secretary of state, be sufficient to defray the debt so due from the defaulting authority, and all expenses incurred in consequence of the non-payment of such debt; and any person or persons so empowered shall have the same powers of levying the local rate, and requiring all officers of the defaulting authority to pay over any moneys in their hands, as the defaulting authority itself would have in the case of expenses legally payable out of a local rate to be raised by such authority; and the said person or persons, after repaying all sums of money so due in respect of the precept, shall pay the overplus, if any (the amount to be ascertained by the secretary of state), to or to the order of the defaulting authority.

As to recovery of penalties.

9. Penalties under any section incorporated with this Act shall be recovered in manner directed by the Act passed in the session holden in the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three.

All powers conferred by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by any other Act of parliament, and any such other powers may be exercised as if this Act had not passed.

Nothing in this Act contained shall be deemed to exempt any person from any penalty to which he would have been liable if this Act had not been passed.

Provided that no person who has been adjudged to pay any penalty in pursuance of this Act shall for the same offence be liable to a penalty under any other Act.

Amendment of section 37 of 29 & 30 Vict. c. 90.

10. The sewer authority, or in the metropolis the nuisance authority, shall have the like power to make provision for the temporary supply of medicine and medical assistance for the poorer inhabitants as it now has to provide hospitals or temporary places for the reception of the sick under the thirty-seventh section of the Sanitary Act, 1866, but such power to make provision for the temporary supply of medicine and medical assistance shall not be exercised without the sanction of Her Majesty's privy council.

Construction of first part of Sanitary Act, 1866.

11. In the construction of the first part of the Sanitary Act, 1866, "owner" shall have the same meaning as it has in the second part of the said Act; and notices may be served for the purposes of the first part of the said Act in the same manner in which they are required to be served under the second part of the said Act.

AN ACT

TO AMEND AND EXTEND THE SANITARY LAWS.

37 & 38 VICT. CAP. 89.

7TH AUGUST, 1874.

WHEREAS it is expedien that the Sanitary Acts should be explained and amended, and that sundry other provisions should be made to extend the same:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :—

Miscellaneous Sanitary provisions.

Provision for polluted water in wells and pumps.

50 (*a*). If it shall be represented to any nuisance authority in the metropolis or to any sanitary authority that within their district the water in any well, tank, or cistern, public or private, or supplied from any public pump, and used or likely to be used for domestic purposes, is so polluted as to be injurious to health, such authority may apply to any justices having jurisdiction within their district, in petty sessions assembled, for an order to remedy the same, and thereupon such justices shall summon the person occupying the premises to which the well, tank, or cistern belongs, if it be private, and as regards any public well, tank, or cistern, or pump, such other person as shall be alleged in the application to be interested in the same, and shall either dismiss the application or make such an order in the case, by directing the well, tank, or cistern, or pump to be permanently or temporarily closed, or the water to be used for certain purposes only, or providing otherwise, as shall appear to them to be requisite to prevent injury to the health of persons drinking the water.

For the purposes of such inquiry, the said justices may cause the water to be analysed at the cost of the sanitary authority applying.

And all the expenses incurred by such authority in and about the procuring of this order, and in carrying it into execution, shall be charged upon the funds applicable to their general expenditure, but

(*a*) The previous sections do not apply to the metropolis. This act is repealed by the Public Health Act (1875), except as to the metropolis or metropolitan police district.

in the case of a rural sanitary authority, shall be deemed to be special expenses within the meaning of the Sanitary Acts. Section 50.

Provided that where the order is made in respect of any private well, tank, or cistern, any person aggrieved thereby may appeal against the same in the manner provided by the one hundred and thirty-fifth section of the Public Health Act, 1848, and with the same incidents and consequences.

Where the justices dismiss the application, they may, if they think fit, award such costs to the person summoned as to them shall appear to be reasonable.

Hospital when to be deemed within district.

51. For the purposes of the twenty-sixth section of the Sanitary Act, 1866, every hospital or place for the reception of the sick which shall be declared by an order of the local government board to be situated within a convenient distance of the district of any authority, for the purposes of that section shall be deemed to be within the district of such authority.

Provision for the execution of order of a justice removing sick person to a hospital.

Where a justice shall make an order under that section for the removal of a sick person to a hospital or other place, he shall address it to such police or other officer as he shall consider expedient; and every person wilfully disobeying the order, or obstructing the execution of the same, shall be guilty of an offence punishable on summary conviction before two justices, and be liable to a penalty not exceeding ten pounds.

Extension of 35 & 36 Vict. c. 79, ss. 51, 52, to the metropolis.

52. The fifty-first and fifty-second sections of the principal Act shall apply to the metropolis, and the local authorities empowered to execute the Nuisance Removal Acts in the metropolis and in the city of London respectively shall be deemed to be sanitary authorities within the operation of the said fifty-first section, and shall be empowered to pay the expenses to be incurred by them under those sections out of their general rate.

Extension of right of complaint under Nuisances Removal Acts.

53. The right of complaint given by the thirteenth section of the twenty-third and twenty-fourth years of the reign of her Majesty, chapter seventy-seven, shall extend to nuisances in any parish or place, whether on private or public premises, and may be exercised by any inhabitant in such parish or place, or by any owner of premises situated therein, or by any other person aggrieved or injuriously affected thereby.

The provisions of the Nuisances Removal Act for England (Amendment) Act, 1863, extended.

54. The second section of the Nuisances Removal Act for England (Amendment) Act, 1863, shall extend to milk in the same manner as if that word had been introduced after the word 'flour' wherever the word 'flour' occurs in the said section; and the justice who under the said section is empowered to convict the offender therein described may be other than the justice who may have ordered the article to be disposed of or destroyed.

Warrant may be granted by a justice to search for unsound food.

55. On complaint made by a medical officer of health or by any inspector or other officer of a nuisance authority in the metropolis, or of any sanitary authority upon oath, any justice may grant a warrant to any such officer to enter any building or part of a building or other place in which the complainant has reasonable ground for believing that any animal, carcase, meat, poultry, game, fish, fruit, vegetables, corn, bread, flour, milk, intended for sale for the food of man, which is so diseased, unsound, or unwholesome as to be unfit for the food of man, is kept or concealed, and to search for, seize, and carry away any such animal, carcase, meat, poultry, game,

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fish, fruit, vegetables, corn, bread, flour, or milk, in order to have the same dealt with in manner provided by law; and any person obstructing any such officer in performance of any duty under this section shall, in addition to any other punishment to which he may be subject, be liable to a penalty not exceeding twenty pounds.

Penalty on false representations with respect to infectious disease.

56. If any owner or occupier or person employed to let for hire, or to show for the purposes of letting for hire, any house or part of a house, when questioned by any person negotiating for the hire of such house or part of a house as to the fact of there being in such house, or having within six weeks previously been therein, any person suffering from an infectious, contagious, or epidemic disease, knowingly makes a false answer to such question, the person so answering falsely shall be guilty of an offence punishable on summary conviction, and, at the discretion of the justices having cognizance of the case, be liable to be imprisoned, with or without hard labour, for a period not exceeding one month, or to pay a penalty not exceeding twenty pounds.

Interpretation of Words.

Interpretation of words.

57. All the words used in this Act shall have the same meaning as assigned to them in the Sanitary Acts as defined by the principal Act; and all the provisions of the Sanitary Acts shall apply to this Act, except so far as they shall be repealed hereby, or shall be inconsistent with anything herein contained.

Provided that all rights, powers, and authorities saved by any of the said Acts, and not transferred or expressly repealed by this Act, and all enactments incidental to such rights, powers, and authorities, shall be and remain in full force and validity.

The term "sanitary authority" used in the forty-first and forty-second sections of the Public Health Act, 1872, shall be held to include a local board of health constituted for the purposes of main sewerage only; and the term "consent" used in the twenty-fifth section of the said Act shall be deemed to apply and to have applied to a consent given either before or after the passing of the resolution for the adoption of the Acts or for the constitution of the district therein referred to.

Extent of Act.

58. This Act shall not apply to Scotland or Ireland.

Title of Act.

59. This Act may be cited as the Sanitary Law Amendment Act, 1874.

AN ACT

FOR BETTER PAVING, IMPROVING, AND REGULATING THE STREETS OF THE METROPOLIS, AND REMOVING AND PREVENTING NUISANCES AND OBSTRUCTIONS THEREIN (*a*).

57 GEO. III. CAP. 29.

16TH JUNE, 1817.

WHEREAS many of the streets and public places within that part of the metropolis which is situate within the weekly bills of mortality, and the parishes of Saint Pancras and Saint Marylebone, in the county of Middlesex, are divided into parochial and other districts, and are paved and repaired and regulated, and obstructions and nuisances therein are removed, under the direction of certain commissioners or trustees, or other persons appointed to superintend and regulate the same in each of such parochial or other districts, by virtue of certain local Acts of parliament; and the pavements of many of such streets and public places are often in a state dangerous to passengers, and frequently contain nuisances and obstructions which are offensive or injurious: And whereas it would materially tend to the remedying of such defects in the pavements, and such nuisances, if more summary means of compelling the speedy reparation of the pavements of such streets and public places, and of enforcing due regulations as to the various water and gas companies and commissioners of sewers, by whom the pavements of such streets and public places have been frequently

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(*a*) By the 73rd section of 25 & 26 Vict. c. 102, p. 201, *ante*, the powers of improving and regulating streets, and for the suppression of nuisances contained in this Act, shall, so far as the same is in force and is not inconsistent with the provisions of the therein recited Acts and that Act, extend to the metropolis, including any unpaved streets, notwithstanding any exception therein contained. See note to 25 & 26 Vict. c. 102, s. 73, *ante*. This Act did not empower commissioners acting under it to take under their jurisdiction footpaths at the side of a turnpike road; *Loveridge* v. *Hodsoll*, 2 B. & Ad. 602, or to enter private property, such as Ely Place, Holborn; *Paul* v. *James*, 1 Ga. & Dav. 316. As to the construction of this Act, see *Bouverie* v. *Miles*, 1 B. & Ad. 38; *Loveridge* v. *Hodsoll*, *supra*; *Baddeley* v. *Gingell*, 1 Ex. 319; *Burns* v. *Carter*, 5 Bing. 429; *Curling* v. *Johnson*, 3 Moore & Sc. 498. The 12th section of 5 & 6 Will. 4, c. 50 (Highway Act, 1835), enacts that nothing in that Act shall be construed to abridge, repeal, alter, amend, or interfere with the powers and provisions contained in this Act.

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displaced; and also if more adequate funds and authorities were given to the said several commissioners, trustees, and other persons having the superintendence and regulation of the pavements of such streets and public places; for which purposes, may it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that this Act and the provisions herein contained shall extend to all streets and public places which are now paved, or which may be hereafter paved, within the cities of London and Westminster and borough of Southwark, and any other parts of the metropolis which are included within the weekly bill of mortality, and to all streets and public places which are now paved, or which may be hereafter paved, within the parishes of Saint Pancras and Saint Marylebone, in the said county of Middlesex, except only any parts thereof which may be hereinafter particularly excepted (*a*).

Act to extend to all streets within the metropolis and the bills of mortality, and Pancras and Marylebone.

Certain housekeepers in any part of the metropolis may give notice to surveyors of any dangerous or very defective pavement, and shall require the reparation thereof.

6. And be it further enacted, that in case any person being the occupier of an inhabited dwelling-house, situate in any parish or place also within the jurisdiction of this Act, and rated to the relief of the poor of such parish or place wherein such dwelling-house shall be situate, at the sum of £50 at the least, for and in respect of such dwelling-house, or in case any two persons being the occupiers of two several inhabited dwelling-houses situate in any parish or place, parishes or places, also within the jurisdiction of this Act, and each of whom shall be rated to the relief of the poor of such parish or place, parishes or places, wherein such dwelling-houses shall be respectively situate, at the sum of £25 at the least, for and in respect of their said respective dwelling-houses, shall think that the pavement of any street or public place in any parochial or other district within the jurisdiction of this Act, or any part of such pavement, is in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, then and in every such case it shall and may be lawful to and for such one person alone, or for such two persons jointly, to prepare a notice, signed with his or their respective hand or hands, setting forth the number of his or their respective dwelling-house or dwelling-houses, and the street or public place, or streets or public places, wherein such dwelling-house or dwelling-houses is or are situate, and describing the part of the pavements of any street or public place which he or they consider to be then dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, and also requiring the reparation thereof, and to address such notice to any person being a surveyor for the time being of the pavements of and within the parochial or other district wherein the part of any street or public place shall be situate, the pavement whereof shall then be dangerous to passengers, or so very defective as aforesaid, and to give such notice to any such surveyor, or to leave the same for him at the dwelling-house or office within such parochial or other district, inscribed on the boards to be from time to time set up by the commissioners or trustees or other persons having the control of the pavements of and within such parochial or other district pursuant, to the directions of this Act.

(*a*) As to these exceptions, see 25 & 26 Vict. c. 102, s. 73, *ante*.

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Surveyors or commissioners shall cause such dangerous or defective pavement to be repaired.

7. And be it further enacted, that every person from time to time hereafter being the surveyor of the pavements of any parochial or other district within the jurisdiction of this Act, to whom shall be given or for whom shall be left a notice signed and prepared as before directed, of the dangerous or very defective state as aforesaid of any part of the pavement of any street or public place in the parochial or other district in and for which he shall then be a surveyor of pavements, shall forthwith inspect the part of the pavement described in such notice given to or left for him; and if the same or any part thereof shall really be in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, and if the costs and charges of and about the repairing of such dangerous or very defective pavement will not exceed the sum of £2, he shall cause such pavement to be effectually repaired within three days after the day whereon such notice shall have been given to or left for him as aforesaid; and if the costs and charges of and about the repairing of such pavement will exceed the sum of £2, but will not exceed the sum of £10, then he shall cause such dangerous or very defective pavement to be effectually repaired within seven days after the day whereon such notice shall have been given to or left for him as aforesaid; and in either of such cases, such surveyor may and shall cause such pavements to be effectually repaired by and of his own authority, and without any order or direction from the commissioners or trustees or other persons having the control of the pavements of the parochial or other district wherein he shall be appointed to act; and the costs and charges of such effectual reparation shall be paid by such commissioners or trustees or other persons having the control of the pavements of the parochial or other district wherein such dangerous or very defective pavement may be situate; but if it shall appear to the said surveyor, upon the inspection of the pavements described in any notice to be given to or left for him as aforesaid, that the same is really in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, and that the costs and charges of and about the effectual reparation of such part of the said pavements as may then be in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, will exceed the sum of £10, then and in every such case the said surveyor shall deliver a copy of the notice given to or left for him as aforesaid, to the clerk or clerks or other proper officer of the commissioners or trustees or other persons having the control of the pavements of such parochial or other district, within three days after such notice shall have been given to or left for him as aforesaid, and shall in writing require such clerk or clerks or other proper officer, duly to summon a general meeting of the commissioners or trustees or other persons having the control of the pavements of such parochial or other district, according to the usual custom of such clerk or clerks or other proper officer, or to the directions of the local Act or Acts of parliament under or by virtue whereof such commissioners or trustees or other persons having the control of the pavements of and in such parochial or other district, shall be appointed; and that such clerk or clerks, or other proper officer, within two days after he shall receive such notice and requisition from the said surveyor, shall summon or cause to be summoned a general meeting of the said commissioners or trustees, or other persons having the control of the pavements of and in such parochial or other district, to be held within four days then next, for the purpose of considering the notice given to or left for the surveyor appointed by them as aforesaid; and that the said commissioners or trustees, or other persons having

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the control of the pavements of such parochial or other district, or a sufficient number of them for the transaction of business, according to the provisions of the local Act or Acts of parliament under or by virtue of which they are or shall be appointed, shall assemble at their usual place of meeting pursuant to such summons, and shall then and there consider such notice so given to or left for the said surveyor of the pavements of such parochial or other district; and if such part of the pavement described in such notice, or any part thereof, shall really be in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, then such commissioners or trustees or other persons shall then and there direct the effectual reparation of such part of the pavements mentioned in the said notice as may be dangerous to passengers, or so very defective as aforesaid, and shall cause the same and every part thereof to be so effectually repaired, at their cost and charges, within twenty-eight days then next, if the charges of and about so effectually repairing the same will not in their judgment exceed the sum of £50, and within six weeks then next if the charges of and about so effectually repairing the same will in their judgment exceed the said sum of £50.

Justices on neglect may summon surveyors, and order the repair.

8. And be it further enacted, that if at any time or times hereafter the pavement of any street or public place within the jurisdiction of this Act, being in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, whereof a notice prepared and signed as hereinbefore is directed, shall have been given to or left for any person being a surveyor of the pavements of the parochial or other district wherein the pavement so dangerous to passengers or so very defective as aforesaid, may be situate, shall not be sufficiently repaired within the times hereinbefore appointed for the reparation thereof, (that is to say,) within three days from the day whereon the said notice shall have been given or left as aforesaid, if the costs and charges of and about such repair would not exceed the sum of £2, and within seven days from the day whereon the said notice shall have been given or left as aforesaid, if the costs and charges of and about such repair would not exceed the sum of £10, and within twenty-eight days from the day whereon the said notice shall have been given or left as aforesaid, if the cost and charges of and about such repair would not exceed the sum of £50, and within six weeks next after the said notice shall have been given or left as aforesaid, if the costs and charges of and about such repair would not exceed the sum of £50, then it shall and may be lawful to and for the person or persons by whom any notice signed as hereinbefore is directed shall have been given or left as aforesaid, to apply and complain to any two justices of the peace acting for the city, borough, or county wherein the pavement of the street or public place described in the notice so given or left as aforesaid shall be situate, and that upon proof upon oath, by one or more credible witness or witnesses, that a notice prepared and signed as hereinbefore is directed, had been given to or left for a person appointed and notified to be a surveyor of the pavements of such parochial or other district wherein the pavement described in such notice may be situate, and according to the directions of this Act, and that the part of the pavements in any street or public place described in such notice, and being in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, had not been sufficiently repaired within the time hereinbefore limited by this Act, according to the costs and charges

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which must be incurred in and about such reparation; then such justices of the peace, by a summons under their hands, shall require the said person, being appointed and notified to be a surveyor of the pavements for the parochial or other district wherein the pavement of any street or public place dangerous to passengers, or so very defective as aforesaid, shall be situate, to or for whom the said notice, prepared and signed as aforesaid, shall have been given or left, according to the directions of this Act, to appear before them the said justices, at a place and time to be mentioned in such summons (and the time being twenty-four hours at the least after the said summons shall have been given to the said surveyor, or shall have been left for him at his dwelling house or office within the parochial or other district the pavement whereof he shall be appointed to survey, inscribed on the boards hereinbefore directed to be set up in every parochial and other district within the jurisdiction of this Act), and then and there to show cause why the pavement described in the said notice hath not been sufficiently repaired according to such notice within the times hereinbefore by this Act limited, according to the expense which must be incurred in and about such repair; and that if the said surveyor, or some person authorized by him, shall not attend before the said justices at the time and place mentioned in such summons, or if he or such other person authorized by him shall then and there attend, and shall not show to them the said justices a sufficient cause or sufficient causes why the said pavement described in the said notice given to or left for the said surveyor as hereinbefore is directed, and every part thereof, have not been sufficiently repaired according to such notice, then and upon proof upon oath by two or more credible witnesses that the pavement described in the said notice is then dangerous to passengers, or so very defective as aforesaid, and that the same is situate within the parochial or other district for which the said surveyor shall have been appointed and notified as appointed to act, it shall and may be lawful to and for the said justices by order under their hands and seals, to order and direct that the said surveyor shall pay to the person or persons by whom the said notice shall have been signed as aforesaid, such sum of money as he or they shall have legally expended for the cost and charges of such summons and order, and which said sum of money so by the said justices ordered to be paid by the said surveyor shall and may be recovered in the same manner in which any other forfeitures and penalties are hereinafter directed to be recovered by virtue of this Act; and the said justices shall also then and there, by an order under their hands and seals, order the said surveyor to sufficiently repair or cause to be repaired all the pavements described in the said notice being in a state dangerous to passengers, or so very defective as aforesaid, and being in the parochial or other district wherein he the said surveyor shall have been appointed to act as surveyor of the pavement, within three days then next if the costs and charges of and about such repair will not exceed the sum of £2, and within seven days then next if the costs and charges of and about the said repair will not exceed the sum of £10, and within twenty-eight days then next if the costs and charges of and about such repair will exceed the sum of £10, but will not exceed the sum of £50, and within six weeks then next if the cost and charges of and about such repair will exceed the sum of £50; and the said order of the said two justices of the peace, within twenty-four hours after the same shall be made, shall be given to the said surveyor, or left for him at his dwelling house or office within the parish or other district the pavement whereof he shall be appointed to survey, inscribed on the said

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boards hereinbefore directed to be set up, and shall be obeyed and performed by him; and he the said surveyor shall sufficiently repair the said pavements, or cause the same to be sufficiently repaired, within the time to be directed by the said order, at the costs and charges of the commissioners or trustees or other persons having the control of the pavements of that parochial or other district wherein the pavement shall be situate which by such order shall be so ordered to be repaired; but if the said surveyor, or any person authorized by him, shall attend before the said justices at the time and place mentioned in such summons, and shall show to the said justices that such notice was not prepared and signed and given or left according to the directions of this Act, or that the pavement described in such notice was not in a state dangerous to passengers, or was not in a state so very defective as to occasion serious inconvenience to passengers and carriages, either at the time of the delivery of such notice, or at the time of the application of the person or persons signing such notice to such justices, or shall then and there show to such justices such other cause or causes as they shall deem sufficient why the said pavements have not been repaired according to such notice, then in any or either of the said cases the said justices shall dismiss the said complaint of the person or persons by whom the said notice shall have been signed as aforesaid, and by an order under their hands and seals shall declare that such person or persons having signed the said notice, and having made the application and complaint to them the said justices, hath or have forfeited the sum of 40s., and shall direct the same sum of 40s. to be paid by him or them to the said surveyor or other person authorized by him, then attending before the said justices, for his own use and benefit; and such sum of 40s. so forfeited shall be recovered in the manner in which other forfeitures and penalties are hereinafter directed to be recovered by virtue of this Act: Provided always, and be it hereby also enacted, that if it shall appear to the said justices of the peace that the costs and charges of and about the repair of any pavement so by them ordered to be repaired as aforesaid will exceed the sum of £50, or that such reparation cannot be probably completed within six weeks then next, then and in such case, or under any other special circumstances, it shall and may be lawful to and for the said justices to extend any of the times for completing the repair of any such pavement to some other time beyond the period of six weeks, or beyond the other periods mentioned by this Act, at their discretion, and so that such repair be completed with all the expedition which the extent of such repair and such special circumstances, in the judgment of the said justices of the peace, will permit.

Surveyors neglecting to attend on justices, or disobeying their orders, shall be fined; and shall be disqualified on a third offence.

9. And be it further enacted, that if any person from time to time hereafter, being the surveyor of the pavements of any parochial or other district within the jurisdiction of this Act, and being summoned by any two justices of the peace as hereinbefore is directed, shall refuse or neglect, either personally or by some person authorized by him, to attend before such justices at the time and place to be mentioned in such summons, or shall refuse or neglect to perform and obey any order which may be legally made by such two justices of the peace, under their hands and seals, as hereinbefore is directed, and which shall direct, according to the provisions of this Act, the reparation of any pavements dangerous to any passengers, or so very defective as to occasion serious inconvenience to passengers and carriages in any streets or public places within the parochial or other district for which he shall be appointed to act as a surveyor of the

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pavements, and to perform and obey the same within the time specified therein (he having notice thereof as hereinbefore is directed, and not being prevented from the observance and performance of such order by frost or other unavoidable circumstances, or by the neglect or proceedings of any water or gas company or commissioners of sewers), then and in such case the said person being the surveyor as aforesaid shall forfeit and pay for such refusal or neglect any sum not exceeding £10 for the first offence, and a sum not exceeding £20 for the second offence, and a sum not exceeding £30 for every third offence, to be recovered in such manner as other penalties or forfeitures are by this Act hereinafter directed to be recovered, and to be paid, when recovered, to the churchwardens or overseers of the poor of the parish or district wherein any such dangerous or defective pavement shall be situate, and to be by them applied to and for the use of the poor of such parish or district, and in aid of the rates for the relief of the poor of such parish or district, and to no other person or persons, and for no other use or purpose whatsoever; and such person who shall be guilty of such third offence shall thereafter become disqualified from acting in the said office of a surveyor of the pavements in the same or in any other parochial or other district within the jurisdiction of this Act, and from being re-appointed or appointed thereto, and from acting therein, either gratuitously or otherwise, or under any pretence whatsoever unless he shall so act under the direction and by the command of the commissioners, trustees, or other persons by whom he shall have been appointed: Provided always, that all costs, charges, and expenses which such person, being the surveyor of the pavements of any parochial or other district, shall incur or expend in and about the observance and performance of any such order made by the said two justices of the peace as aforesaid for the reparation of the pavements in such parochial or other district being dangerous to passengers or very defective as aforesaid, as hereinbefore is directed, or which he shall incur or be put unto in consequence of his refusal or neglect to perform and obey any such order by the directions in writing of the commissioners or trustees, or other persons having the control of the pavements of the parochial or other district for which he may be appointed to act, shall be forthwith paid or reimbursed to him by such commissioners or trustees, or other persons, out of the moneys which they shall then possess, or shall first thereafter receive, by virtue or on account of any rates or assessments thentofore or thereafter made, for and towards the expenses of the paving or reparation of the pavement of such parochial or other district, or otherwise, by virtue of any local Act or Acts of parliament or by virtue of this Act.

New mains of water pipes, &c. to be made of iron, and not laid down during the months of December, January, or February (*a*).

12. And be it further enacted, that all new or complete mains or pipes for the conveyance of water, or inflammable air or gas, which after the passing of this Act shall be laid down beneath the surface of any streets or public places within the jurisdiction of this Act, by or on account of any water or gaslight company, and whether such new or complete main of pipes shall or shall not be substituted for or added to any other complete main or mains of pipes for the conveyance of water or inflammable air or gas, theretofore laid down for the conveyance of water, or of inflammable air or gas, shall consist and

(*a*) The provisions contained in this section relative to breaking up pavements, seem to be superseded by section 109 of 18 & 19 Vict. c. 120, *ante*.

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be made of iron alone, and of no other material; and the pavements of any streets or public places within the jurisdiction of this Act, or any part thereof, shall not be broken or taken up for the purpose of laying down any new main of pipes, for the conveyance of water or of inflammable air or gas, during any part of the months of December, January, or February in any year; and also that from and after ten years from the passing of this Act all and every new main pipe and pipes for the conveyance of water, or of inflammable air or gas, which shall be laid down by or on account of any water or gaslight company, or other persons, shall consist and be made of iron alone, and of no other material; and all and every new service and other pipes shall not consist or be made of wood, but shall consist or be made of iron or lead, or of some durable material; and that if any water or gaslight company, or any other person, shall break or take up, or cause to be broken or taken up, any such pavement for the purposes aforesaid during the months aforesaid, or shall lay or cause to be laid down any pipes consisting or made of any materials in violation of the provisions of this Act, then and in every such case the company or other person so offending shall forfeit and pay the sum of £5 for every square foot of pavement which shall be so broken or taken up by them or on their account, and the like sum for every foot in length of pipe which shall be so laid down consisting or made of any such material; and which said forfeitures and penalties shall be recoverable in the same manner in which other forfeitures and penalties are hereinafter directed to be recovered by virtue of this Act: Provided always, that nothing herein contained shall extend or be construed to extend to hinder or prevent any water company, at any time within or after the space of ten years from the passing of this Act, from repairing all or any of their present mains or service pipes, which are not constructed of iron, with wood or such other materials whereof such mains or pipes are now constructed.

Plans of pipes and sewers may be examined by surveyors of pavement.

13. And be it further enacted, that it shall and may be lawful to and for any person appointed to act as a surveyor of the pavements in any parochial or other district within the jurisdiction of this Act, and to and for any other person or persons appointed by the commissioners or trustees, or other persons having the control of the pavements of any such parochial or other district, when he shall be directed so to do by the commissioners or trustees, or other persons by whom he or they shall be appointed to act, from time to time and at any times between the hours of ten of the clock in the forenoon and of four of the clock in the afternoon of any day not being a Sunday or holiday appointed by law, at the office or counting-house of any water or gaslight company, any of whose pipes for the conveyance of water or of inflammable air or gas shall then be laid beneath the surface of any of the streets or public places within each of such parochial or other districts, the pavements whereof shall be under the control of such several commissioners or trustees, or other persons, or for which any such surveyor shall be appointed to act, and at the office of any commissioners of sewers then having jurisdiction over the common and public drains and sewers within every such parochial or other district, to examine and inspect any and every map or plan, or draft or survey, or delineation or description of all and every the main of pipes and pipes belonging to any of such water or gaslight companies, then possessed by them, or being in their custody or power, and any and every map or plan, or draft or survey, delineation or description, of the common and public drains or sewers being within such parochial or other district, and under the jurisdic-

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tion of such commissioners of sewers, then possessed by them, or being in their custody or power, he such surveyor for the time being, or such other person or persons appointed by the said commissioners or trustees, or other persons having the control of the pavements in any such parochial or other district, having given to a clerk or secretary of any such company or commissioners of sewers, or having left at the office or counting-house of such company or commissioners of sewers, two days previous notice in writing of his or their intention to attend at the office or counting-house of such companies or commissioners of sewers for the purpose aforesaid; and that the secretary or clerk or some other officer of such company or commissioners of sewers, shall then and there produce and show, or cause to be produced and shown, unto such surveyor or other person or persons, all and every the maps, plans, drafts, surveys, delineations, and descriptions aforesaid, in the custody or power of the said company or commissioners of sewers, and shall permit him or them then and there to take extracts therefrom, or copies thereof, or of and from any of them, or any part of any of them, so far as may relate to the mains of pipes or pipes, and to the public or common sewers or drains which shall be laid or be beneath the surface of the streets or public places within the parochial or other districts for which such surveyor of pavements, or other person or persons appointed by any such commissioners or trustees, or other persons having the control of pavements, shall be deputed or directed to act.

Officers of companies, &c. to notify their names and places of abode to surveyors of pavements.

14. And be it further enacted, that all and every the secretaries or clerks, surveyors or inspectors, and the several and respective turncocks, employed or appointed, or hereafter being employed or appointed by all and every the water and gaslight companies, any of whose pipes shall be laid beneath the surface of any street or public place in any parochial or other district within the jurisdiction of this Act, and also all and every the clerk and clerks, secretary and secretaries appointed or being hereafter appointed by any commissioners of sewers whose jurisdiction shall extend over the common or public drains or sewers within every such parochial or other district, within forty days next after the passing of this Act, or within the space of five days next after he or they shall be hereafter severally appointed to such several offices, situations, or employments, shall give notice in writing to each and every of the clerk or clerks to the commissioners or trustees, or other persons having the control of the pavements, or to the surveyor and surveyors of the pavements of each parochial or other district, beneath the surface of the streets or public places wherein the mains or pipes of such company, or any of them, shall be laid, or there shall be any common or public drains or sewers within the jurisdiction of such commissioners of sewers, of his, their, and every of their christian and surnames and place or places of abode, and of the company or commissioners of sewers by whom he or they is or are, or hath or have been so appointed or employed, and also of the place which is appointed as the office or counting-house of the said company or commissioners of sewers; and that in case any such person or persons shall neglect to give such notice within the respective times aforesaid, every such person or persons so offending in either of the said cases shall forfeit and pay the sum of £10, to be recovered in the same manner in which other penalties and forfeitures are hereafter directed to be recovered by virtue of this Act.

Surveyor

15. And be it further enacted, that when and so often as it shall

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may require repair of pipes and drains when defective.

Notice to be given to repair them.

appear to any person appointed to Act as a surveyor of pavements in any parochial or other district within the jurisdiction of this Act, that any pipe or pipes, stopcock, plug, or other thing belonging to any water or gaslight company, or that any public sewer beneath the surface of the pavement of any street or public place within such parochial or other district, be broken or damaged, it shall be lawful for such surveyor, and he is hereby required to give immediate notice, signed by himself, to the company or commissioners of sewers to whom it may appear to him that such pipe or stopcock, plug, or other thing, or sewer, doth or may belong, by either giving such notice to a clerk or secretary, or to a turncock of such company, or to a clerk or secretary of such commissioners of sewers, or to some or one of them, or by leaving the same at the place or places of abode of some or one of them, or at the office or counting-house of such company or commissioners of sewers, and shall require that such pipe, stopcock, plug, or other thing, or sewer, be examined, and, if needful, that such pipe, stopcock, plug, or other thing be repaired, altered, amended, or renewed, and such sewer be repaired by such company, or commissioners of sewers; and that within forty-eight hours after such notice shall be so given or left as aforesaid, the said company or commissioners of sewers, to or for whom, or to or for whose officer or servant such notice shall have been given or left as aforesaid, shall cause to be taken up the pavement of the street or public place beneath which the pipe, stopcock, plug, or other defective thing, or sewer, shall be, and shall cause the ground to be opened, and shall also cause the said pipe, stopcock, plug, or other thing to be substantially repaired, altered, amended, or renewed, or the said sewer to be examined, and, if necessary, to be substantially repaired, and the ground properly filled in with hard rubbish or other good materials, and rammed down, within forty-eight hours next after such notice shall be given or left as aforesaid, or with all convenient expedition, in the judgment of the commissioners, trustees, or other persons having the control of the pavements in the parochial or other district wherein such pavement, street, or public place shall be situate, and to their satisfaction, or the satisfaction of any three or more of them; and also within twelve hours after such pipe, stopcock, plug, or other thing shall be so substantially repaired, altered, amended, or renewed, or such sewer shall be so substantially repaired, and the ground above the same shall be so filled in and rammed down, the said company or commissioners of sewers shall cause notice thereof, signed by the clerk or secretary to such company or commissioners of sewers, to be given to the said surveyor of pavements, or to the pavior or paviors or other persons then employed or appointed by the commissioners or trustees, or other persons having the control of the pavements in such parochial or other district, to pave and repair the pavements within such parochial or other district, as the said commissioners or trustees or other persons for the time being may from time to time direct, that such examination, and, if necessary, such reparation, alteration, amendment, or renewal, hath been made pursuant to such notice of the surveyor of pavements, and that the ground hath been refilled and rammed down, that the pavement in such street or public place may be forthwith relaid in the manner directed by this Act; and in case the water or gas company, or commissioners of sewers, to or for whom such notice of the surveyor of pavements shall have been given or left as aforesaid, and to whom such pipe, stopcock, plug, or other thing, or sewer, referred to in such notice shall belong, shall neglect to cause the same to be repaired, altered, or amended, or renewed, as the case may be,

Penalty on company to whom the pipes belong for not repairing

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and the ground to be filled in and rammed down to the satisfaction of the said commissioners, trustees, or other persons having the control of the pavements in such parochial or other district, or any three or more of them within the time hereinbefore limited and appointed for those purposes, or shall neglect to give or cause to be given notice thereof as aforesaid to the said surveyor of the pavements, or to the pavior or paviors, or other persons employed or appointed by the commissioners or trustees, or other persons having the control of the pavements in such parochial or other district, to pave and repair the pavement within such parochial or other district; then the said company or commissioners of sewers shall for the first neglect and offence forfeit and pay the sum of £5, and for the second neglect and offence shall forfeit and shall pay the sum of £8, and for the third and every subsequent neglect and offence shall forfeit and shall pay the sum of £10, to be recovered in the same manner in which other penalties and forfeitures are directed to be recovered by virtue of this Act.

them, and giving notice thereof to the pavior;

16. Provided always, and be it further enacted, that in case it shall happen and it shall be discovered, after any pavement in any street or public place shall have been taken up, and the ground shall have been opened, that any pipe, stopcock, plug, or other thing, beneath the surface of the pavement of any street or public place, which shall have appeared to any surveyor of pavements to require to be repaired, altered, amended, or renewed, shall not belong to the water or gas company to or for whom such notice for the reparation, alteration, amendment, or renewal thereof as aforesaid shall have been given or left as is hereinbefore directed by the said surveyor, but to some other water or gas company, or to some other persons, then such company to or for whom the said notice of the said surveyor of pavements shall have been given or left, within twenty-four hours after the notice from the said surveyor of pavements shall have been given or left as aforesaid, shall cause a notice, signed by the secretary or clerk, to be given in the same manner hereinbefore directed as to the service of the original notice to the company or other persons to whom the pipe, stopcock, plug, or other thing shall appear to belong, which did appear to the said surveyor of pavements to require reparation, alteration, amendment, or renewal, and shall thereby require them to obey and perform and comply with the said original notice from the said surveyor of pavements, instead of the company to whom such original notice had been given; and that such company or other persons to whom such pipe, stopcock, plug, or other thing, shall belong, shall reimburse and pay on demand to the first-mentioned company to or for whom the original notice may have been given or left, the reasonable costs and charges which they shall have incurred in and about taking up the pavements and opening the ground, and shall obey, execute, and perform the said original notice of the said surveyor, and the directions of this Act relating thereto, in such and the same manner, and within such and the same time, in all respects, as if the said original notice from the said surveyor had been given to them; and they shall be liable to and shall incur the same penalties and forfeitures on neglect so to do, as they ought to have done, or would have been liable to, and would have incurred, if the said original notice had been given to them in manner before directed; and that the company by whom the pavements shall be first taken up and the ground shall be opened, who shall neglect to give the notices hereby required to the company to whom the pipe, stopcock, plug, or other thing, which shall appear to the surveyor of

and if such request should not be made to the proper parties, subsequent information shall be given to them.

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the pavements to require reparation, alteration, amendment, or renewal, shall appear to belong, in manner hereinbefore directed, shall for the first neglect and offence forfeit and pay the sum of £5, and for the second neglect and offence shall forfeit and shall pay the sum of £8, and for the third and every subsequent neglect and offence shall forfeit and pay the sum of £10, to be recovered in the same manner in which other penalties and forfeitures are hereinafter directed to be recovered by virtue of this Act.

Repairs and works by companies, &c., to be executed with all convenient expedition.

17. And be it further enacted, that whenever after the passing of this Act any water or gaslight company, or commissioners of sewers, pursuant to the provisions hereinbefore contained, shall take up or cause to be taken up any pavement of any street or public place in any parochial or other district within the jurisdiction of this Act, or shall place in any street or public place any pipes, or other materials and things, for the purpose of executing any works beneath the surface of any street or public place, or otherwise, all and every such works shall be executed and completed within such reasonable time as the commissioners or trustees, or any other persons having the control of the pavements of the streets and public places in such parochial or other district, or any three or more of them, shall from time to time and at any time direct and appoint; and, also, that all such pipes or other materials and things shall be and remain on the surface of any such street or public place, and of any streets and public places in any parochial or other district, for no longer period than shall be unavoidably necessary in the judgment of the said commissioners or trustees, or other persons having the control of the pavements in such parochial or other district, or any three or more of them; and also that the same pipes or other materials and things shall be from time to time and at all times removed and taken away off and from the surface of any and every street or public place by the water or gaslight company, or commissioners of sewers, or by the officers or servants of the company, or commissioners of sewers, by whom or by whose order, or by whose officers or servants, or for whose offices or works, all or any such pipes or other materials or things shall have been brought to and placed on the surface of such streets or public places, or any of them, and at their costs and charges, within forty-eight hours after such company or commissioners of sewers shall have been required to remove and take away the same by the commissioners or trustees, or other persons having the control of the pavements in any such parochial or other district, or any three or more of them, by a notice signed by three or more of such commissioners or trustees or other persons, and given to such company or commissioners of sewers, or left for them at the dwelling house or place of abode of any secretary or clerk or turncock employed by such company, or of a clerk or secretary to such commissioners of sewers, or at the office or counting-house of such company or commissioners of sewers; and that in case any company or commissioners of sewers shall at any time or times neglect to comply with any and every such notice, and to obey all and every the directions which the said commissioners or trustees or other persons having the control of the pavements in any parochial or other district, or any of them, are by this Act authorized and empowered to give, then and in every or any such case such company or commissioners of sewers shall for the first neglect and offence forfeit and shall pay the sum of £5, and for the second neglect and offence shall forfeit and shall pay the sum of £8, and for the third and every subsequent neglect and offence shall forfeit and pay the sum of £10, to be recovered in the same

manner in which other penalties and forfeitures are directed to be recovered by virtue of this Act. Section 17

Rubbish and obstructions occasioned in streets by the repairs of pipes, &c. to be speedily removed.

18. And be it further enacted, that all dirt, gravel, filth, rubbish, and other things, which at any time or times after the passing of this Act, shall be placed, collected, or occasioned by or by means of any water or gaslight company, or commissioners of sewers, or of any repairs or other works executed and performed or intended to be executed and performed by their officers or servants, or by their orders or directions, or on their account, in any streets or public places in any parochial or other district within the jurisdiction of this Act, by the taking up of the pavement of such streets or public places, or any of them, or by opening the ground beneath the surface of such streets or public places, or by the execution of the works of any water or gaslight company or otherwise, or which shall be in anywise consequent thereon or incidental thereto, in the judgment of the commissioners or trustees or other persons having the control of the pavements of the streets and public places in any such parochial or other district, or any three or more of them, shall be from time to time and at all times collected and removed and carried away, by or at the costs and charges of such company or commissioners of sewers, with all practicable expedition, and to the satisfaction of such commissioners or trustees or other persons having the control of the pavements in such parochial or other district, or any three or more of them; and that such company or commissioners of sewers shall especially so do whenever they shall be required so to do by any notice from such commissioners or trustees or other persons having the control of the pavements in such parochial or other district, or any three of them, or from any surveyor of the pavements appointed by them, signed by them or him, and given to such company or commissioners of sewers, or left for them at the dwelling house or place of abode of any secretary or clerk or turncock employed by such company or commissioners of sewers, or at any office or counting-house of such company, or of any clerk or secretary to any such commissioners of sewers; and that in case any such company or commissioners of sewers shall neglect to collect, carry away, and remove, or cause to be collected, carried away, and removed, from all and every such streets and public places, all such dirt, gravel, filth, rubbish, and other things whatsoever, within twenty-four hours after any such notice shall be from time to time given or left as aforesaid, to the satisfaction of such commissioners or trustees, or other persons by whom any such notice shall be signed, then the said company or commissioners of sewers shall for every such neglect and offence forfeit and shall pay the sum of £5 to be recovered and applied in the same manner in which other penalties and forfeitures are hereinafter directed to be recovered and applied by virtue of this Act.

Bars, watchmen, and other securities are to be provided during repairs of pavements, to prevent accidents (*a*).

19. And be it further enacted, that from time to time and at all times after the passing of this Act, all and every water or gaslight company or commissioners of sewers, who shall take up or shall cause or direct the taking up of any pavement in any street or public place in any parochial or other district within the jurisdiction of this Act, for the purpose of laying down or repairing any pipe or other thing, or any sewer or drain beneath the surface of any street or public place, or for executing any other works or otherwise, from time to time and

(*a*) Compare 18 & 19 Vict. c. 120, s. 111, *ante*.

Section 19. at all times, from the commencement until the completion of all and every such works, and from the breaking up of the said pavement of any street or public place until the same pavement shall be relaid and repaved, at their costs and charges (unless the said works shall be completed during the day on which the said works shall be commenced) shall place or cause to be placed such posts, rails, bars, or ropes, lanthorns and watchmen, in any and every such street or public place, and adopt and execute all such other means for the prevention of any accidents or mischief to any passengers, horses, cattle, or carriages, and every other public inconvenience, to the satisfaction of the commissioners or trustees or other persons having the control of the pavements of the parochial or other district wherein any such street or public place shall be situate, or of a surveyor of pavements or other officer or person appointed by them, in the manner and whenever from time to time such company or commissioners of sewers shall be required so to do by such surveyor of the pavements, or any officer or person appointed by the commissioners, trustees, or other persons having the control of the pavements in such parochial or other district, by any notice to be signed by him or them, and given to such company or commissioners of sewers, or left for them at the dwelling house or place of abode of any secretary or clerk or turncock employed by such company, or of any clerk or secretary to any such commissioners of sewers, or at any office or counting-house of such company or commissioners of sewers; and that in case any such company or commissioners of sewers, for three hours after any such notice as aforesaid, signed as aforesaid, be given or left as aforesaid, shall neglect to place, or shall neglect to continue for the time before limited, in any street or public place, such posts, rails, bars, or ropes, lanthorns and watchmen, or to adopt and execute any and every other means for the purposes aforesaid, to the satisfaction of the commissioners or trustees, or other persons having the control of the pavements of the parochial or other district wherein any such street or public place shall be situate, or of a surveyor of pavements or other officer or person appointed by them, by whom any such notice shall be signed, pursuant to and in the manner directed by any such notice as aforesaid, given or left as aforesaid, then and in every such case the said company or commissioners of sewers shall for every such neglect and offence forfeit and pay the sum of £5, to be also recovered in the same manner in which other penalties and forfeitures are hereinafter directed to be recovered by virtue of this Act.

Breaches in the pavement may be inclosed.

20. And be it hereby further enacted, that in case at any time or times hereafter any pavement in any streets or public places in any parochial or other district within the jurisdiction of this Act shall, by the breaking or falling-in or decay of any sewer or drain, cesspool or watercourse, or any pipe or pipes, stopcock, plug, or other thing, become broken or irregular so as to be dangerous or hazardous to passengers or carriages, it shall and may be lawful to and for any surveyor of the pavements for any such parochial or other district to cause and direct such part of the pavements of any streets or public places as he shall deem so dangerous or hazardous to be forthwith inclosed, in such manner, by such persons, and with such materials as he may direct, and as may be needful to prevent such danger and hazard to passengers or carriages; and that the costs and charges incurred thereabouts shall be ascertained and determined by him, and shall be paid and discharged by the commissioners of sewers, water or gas company, or other person or persons to whom the sewer or drain, cesspool or watercourse, pipe or pipes, stopcock, plug, or other thing

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so broken, fallen in, or decayed, and by the breach, falling-in, or decay whereof such breach or irregularity of the pavements as aforesaid may have been occasioned, and shall and may be certified to them or him, and be paid by them or him within the time, and shall and may be recovered from them or him in such and the same manner as is by this Act directed, limited, and authorized as to any moneys to become due from any persons whomsoever for the costs and charges of repairing or paving or repaving any pavements of any streets or public places by the commissioners or trustees or other person having the control of the pavements in any streets or public places in any parochial or other district within the jurisdiction of this Act.

Stand cocks placed during frosts regulated.

21 And be it further enacted, that no water company whose mains or pipes shall be laid beneath the surface of any street or public place in any parochial or other district within the jurisdiction of this Act, shall place or set up, or cause to be placed or set up, any stand cock or pump, or other instrument, machine, or thing, for the supply of water in times of frost or otherwise, in any public street or place within the jurisdiction of this Act, which shall be furnished with any other than a metal cock and spout, to be to the satisfaction of the surveyor of the pavements for such parochial or other district for the time being; and that any water company who shall set up, or cause to be set up, any other stand cock, pump, or other instrument, machine, or thing, furnished with any other than a metal cock and spout, in any street or public place, and which shall not be to the satisfaction of the surveyor of the pavements for such parochial or other district, shall forfeit and shall pay for every such offence the sum of 20*s.*, to be recovered in the same manner in which other penalties and forfeitures are hereinafter directed to be recovered by virtue of this Act.

Works neglected by companies, &c., may be executed by surveyors of pavements.

22. And be it further enacted, that in case any water or gaslight company, or commissioners of sewers, at any time or times after the passing of this Act, shall neglect to take up the pavement in any street or public place in any parochial or other district within the jurisdiction of this Act; or to open any ground beneath the surface of such street or public place; or substantially to repair, alter, or amend, or renew any pipe, plug, stop cock, or other thing, or any public sewer, as the case may be; or to give the notices required by this Act to any other company, or to any paviors, surveyors of pavements, or other persons; or to remove or take away any pipes, or other materials or things from any street or public place; or to collect and carry away or remove all dirt, gravel, filth, rubbish, and other things, from any street or public place; or to place and continue posts, rails, bars, or ropes, lanthorns and watchmen, in any street or public place; or to do and execute all and every such works and things, and all or any other works and things directed and required by this Act to be done and executed by any such company or commissioners of sewers, and pursuant to any notice given or left as herein directed by any commissioners or trustees, or other persons having the control of the pavements in the streets or public places within any parochial or other district within the jurisdiction of this Act, or by the surveyors of pavements, or other officers or persons appointed by them or otherwise, and to their respective satisfaction, and within the several times and periods specified and directed by this Act; then and in every or any of such cases, and at all times afterwards, it shall and may be lawful to and for any surveyor of the pavement of the parochial or other district wherein the street or public

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place shall be situate as to which any such neglect shall occur, and all and every such surveyors are hereby empowered and required, forthwith to cause all and every such several works, matters, and things, which shall not be executed and performed by every such company or commissioners of sewers, or which shall not be well, substantially, and effectually executed and performed to his or their satisfaction, or to the satisfaction of the commissioners or trustees, or other persons by whom he or they shall be appointed, within the times and periods limited by this Act to be well and effectually performed, to his or their satisfaction, or to the satisfaction of such commissioners or trustees, or other persons as aforesaid, as herein provided, at the costs and charges of such company or commissioners of sewers who shall have so neglected well, substantially, and effectually to perform and execute the same, and every of them, and every part thereof; and that such costs and charges and every of them shall be reimbursed and paid by any and every such company or commissioners of sewers to such surveyor or surveyors of pavements, or to the person or persons employed by him or them to perform and execute any or every of such works, or to the commissioners or trustees, or other persons having the control of the pavements of the parochial or other district within which such works shall be performed and executed, or to their treasurer, or to such other person or persons as such commissioners or trustees or other persons shall from time to time appoint to receive the same; and that the amount of such costs and charges, and of the moneys so to be paid, being directed by the said commissioners or trustees or other persons, shall be ascertained and notified, and certified and recovered (over and above all and every the penalties and forfeitures which may be incurred for any such neglect by virtue of this Act) in the same manner in which any costs and charges which may be incurred, and any moneys which may become due, for and about and in respect of the relaying or repairing of any pavements hereafter broken or taken up in any streets or public places by or by the direction or on account of any company, commissioners of sewers, or other persons, are to be ascertained and notified and certified, and may be recovered by virtue of this Act.

Pavements taken up by companies, &c., to be relaid by commissioners of pavement. (*a*)

23. And be it further enacted, that when and as often as any pavement of any streets or public places in any parochial or other district within the jurisdiction of this Act shall be broken or taken up by any water or gaslight company, or by any commissioners of sewers, or by any person or persons acting by or under their respective orders or authorities, or by any other person or persons by the directions of this Act, or by and with or without the consent of the commissioners or trustees or other persons having the control of the pavements in any parochial or other district wherein any street or public place shall be situate, the pavements whereof or any part whereof shall be broken or taken up, then all such part and parts of the pavements of any such street or public place which from time to time and at all times shall be so broken or taken up as aforesaid, and the pavement contiguous thereto, as far as may be rendered necessary in the judgment of a surveyor of pavements to such commissioners or trustees, or other persons having the control of the pavements in such parochial or other district, and after the ground opened shall be refilled and rammed down pursuant to the directions of this Act, shall be

(*a*) Compare section 110 of 18 & 19 Vict. c. 120, and 25 & 26 Vict. c. 162, s. 82.

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with all convenient speed completely and substantially repaved, with all necessary stones, ballast, gravel, and other materials, and shall be kept in complete repair, by the pavior or mason then contracting with or employed by such commissioners or trustees or other persons, or by such person or persons as they may from time to time appoint for that purpose, under the inspection and direction and to the satisfaction of the said surveyor of pavements to the said commissioners or trustees or other persons, for the periods following; (that is to say,) all such part or parts of the pavements of any such street or public place which from time to time and at all times shall be so broken or taken up as aforesaid, and the pavement contiguous thereto as aforesaid, which shall be so broken or taken up for the purpose of making and laying down any main or mains of pipes, or of substituting iron for wooden pipes, or of making any sewer, vault, or drain, for twelve calendar months next ensuing the breaking and taking up of the same pavements; and all such part or parts of the pavements of any such street or public place, which from time to time and at all times shall be so broken or taken up as aforesaid, and the pavement contiguous thereto as aforesaid, which shall be so broken or taken up for the purpose of altering the position of or of repairing any pipes, stopcocks, or plugs, or of repairing, cleansing, or altering any sewer, vault, or drain, for three calendar months next ensuing the breaking and taking up the same pavements; and that the costs, charges, and expenses of taking out any ground, and filling in hard rubbish or other good materials, and of repairing and keeping in necessary repair for the periods aforesaid all or any such pavement in manner aforesaid, and all the expenses of cartage, and all other charges and expenses atending the same, as well as all costs and charges which may be incurred pursuant to the directions of this Act by any surveyor of pavements in and about executing and performing any works or matters neglected to be executed and performed by any company or commissioners of sewers, as hereinbefore directed, shall be ascertained and fixed from time to time by the surveyor of pavements to such commissioners or trustees or other persons within whose parochial or other districts such works or other matters shall have been performed and executed, or such pavements shall have been broken up and repaved; and such costs and charges from time to time, whenever directed by the said commissioners or trustees or other persons, shall be certified by their clerk or clerks, surveyor or surveyors of pavements, or one of them, or some other officer or servant appointed by them, by a note to be given to the said company or commissioners of sewers, or other persons who shall have neglected to perform or execute such works, or by whom or by whose orders or authorities or on whose account such pavement shall have been broken or taken up, or to be left for such company, commissioners of sewers, or other person or persons, at their dwelling-house or dwelling-houses, or place or places of abode, or at any office or counting-house of any such company or commissioners of sewers, or at the dwelling-house or place of abode of any secretary, clerk, or turncock employed by such company, or of any clerk or secretary to any such commissioners of sewers; and that the full amount of the costs and charges so certified shall be paid within two months after the same note shall be given or left as aforesaid, by such company or commissioners of sewers, or other person or persons to or for whom the same note shall have been given or left as aforesaid, to the surveyor of pavements, or to the treasurer to such commissioners or trustees, or other persons having the control of the pavements as aforesaid, or to the mason or pavior or other person or persons by whom any such

and the charges repaid to them by such companies.

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works or matters shall have been done and performed, or to such other person or persons as the said commissioners or trustees or other persons, by the said note of their clerk or clerks, surveyor or surveyors, or other officer or servant, shall direct and appoint to receive the same, or any part thereof; and the receipt or receipts of the person or persons so appointed to receive the same shall be a good and effectual discharge or discharges for any and every such payment, and for all and every the moneys in any such receipt or receipts expressed and acknowledged to have been received; and also that in case at any time or times the full amount of such costs and charges, so certified as aforesaid, shall not be so fully paid without any deduction or abatement whatsoever, within two months after such note as aforesaid shall have been given or left aforesaid, and although no other demand shall be made of any such amount of costs and charges, or any part thereof, then from time to time and at all times afterwards it shall and may be lawful for the said commissioners or trustees, or other persons having the control of the pavements as aforesaid, to recover double the amount of such costs and charges so certified and being unpaid, of and from the company or commissioners of sewers, or other person or persons to or from whom such note shall have been given or left as aforesaid, either by distress and sale of the goods and chattels of such company or commissioners of sewers or other person or persons, by a warrant under the hand and seal of any justice of the peace for the city, borough, or county wherein such parochial or other district shall be situate, and which warrant every such justice is hereby empowered and required to grant, upon proof of the service of such note as aforesaid, and of the nonpayment of the costs and charges thereby certified, by the oath or affirmation of the person who shall have left any such note as directed by this Act, and by the oath or affirmation of the person or persons appointed by such note to receive such costs and charges of the nonpayment thereof, and every part thereof, to him or them, and which oath or affirmation any and every such justice of the peace is hereby empowered and required to administer, or to recover the same and every part thereof in any court or courts of request or county court, or by any action or actions in any court of law; and that in any such proceedings in any court or courts of request or county court, or in any such action or actions, it shall be only necessary for the said commissioners or trustees or other persons, or the complainant or complainants, plaintiff or plaintiffs, in any such proceedings or actions, to prove the service of such note pursuant to the directions of this Act, to entitle him or them to recover by such proceedings, or by such action or actions from the said company or commissioners of sewers or other person or persons, double the full amount of such costs and charges so certified by such note, unless the said company or commissioners of sewers or other person or persons shall prove, upon the return of the summons in such proceedings in any court or courts of requests or county court, or on the trial of such action or actions, the actual payment of the full amount of the costs and charges so certified, within two months after the said note was left as aforesaid, to the person or persons thereby appointed to receive the same, and that in any and every such action or actions no essoign, protection, or wager of law, or plea in abatement, or any dilatory plea, or more than one imparlance, shall be allowed.

Commissioners, &c., may pave

52. And be it further enacted, that it shall and may be lawful to and for the commissioners or trustees, or other persons having the control of the pavements of the streets and public places in any

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parochial or other district within the jurisdiction of this Act, from time to time to pave and keep in repair, or cause to be paved and kept in repair, or to enter into any contract or contracts for paving and keeping in repair, all or any part or parts of the carriageways or footways of all or any of the streets or public places in their respective parochial or other districts within the jurisdiction of this Act; and also that all and every the pavements, stones, posts, and other materials which now are or which may be hereafter placed in the foot or carriageways of any streets or public places within their respective parochial or other districts, which shall have been or may from time to time be paved or repaired by the said commissioners or trustees, or other persons having the control of the pavement in each of their respective parochial or other districts, and all things and implements which shall be then laid down, or may be purchased, provided, or made use of by them therein or thereabouts, shall be and the same are hereby vested in the respective commissioners or trustees, or other persons having the control of the pavements of the streets and public places within each of their respective parochial or other districts, and shall and may be laid and stated as their property according to the general name or title by which they are distinguished in the respective local Act or Acts of parliament relating to their respective parochial or other districts, under and by virtue whereof they are or shall be from time to time appointed to act, and not according to their individual name or names, in any indictment, information, or other proceeding which may be preferred or filed, or taken against any person or persons, for removing or taking away, stealing, detaining, spoiling, injuring, or destroying the same pavements or materials, or implements or things, or any of them, or any part or parts thereof; and also that it shall and may be lawful for them from time to time to order all or any of the stones and other materials then being in any such streets or public places as they may from time to time pave or repair, to be made use of in or towards the paving or repairing the foot or carriageway pavements in any streets or public places within their respective parochial or other districts; and also may from time to time purchase, or rent upon lease or otherwise, any premises which they may think necessary, for the purpose of laying or depositing or otherwise disposing of all or any of their stones or other materials or implements, for and until such time as they shall use the same; and also that they may from time to time sell and dispose of all or any part of the old pavements or other materials or implements possessed by or belonging to them, to such person or persons as shall be willing to purchase the same, they applying the moneys arising from time to time by any and every such sales in aid of the moneys raised and to be raised within their respective parochial or other districts for or towards the expense of paving and repairing the pavements therein; and also shall and may cause to be dug, carted, and carried out of or brought into any streets or public places within their respective parochial or other districts, and shall and may purchase any such gravel, stones, and other materials, horses, carts, and tools, and employ such artificers, workmen, labourers, carters, and other persons, and issue such money on those accounts, and do all and every such other acts and things as the said commissioners or trustees, or other persons having the control of the pavements as aforesaid, may from time to time judge necessary or expedient for or towards or about the paving or

streets within their districts, paving materials being vested in them (*a*);

and to be disposed of by them;

and that necessary materials may be purchased, and workmen employed.

(*a*) See section 98 of 18 & 19 Vict. c. 120, *ante*; and sections 77, 78, 80, 81 of 25 & 26 Vict. c. 102, *ante*.

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repairing the pavements of any streets or public places within their respective parochial or other districts, or incidental thereto; and also that they or their respective surveyor or surveyors of the pavements, or any inspectors or other officers by them appointed for the time being, shall and may from time to time cause the ground of any streets or public places within their respective parochial or other districts to be raised or lowered in such manner as they or he shall think necessary; and also that they or their respective surveyors, inspectors, or other officers for the time being, during the time of the paving or of the repairing the pavements of any streets or public places within their respective parochial or other districts, or of any grates, drains, or sewers therein, shall and may order the necessary materials to be placed or deposited in any such street or public place, or in any adjoining street or public place; and may stop up the way through or along any such street or public place, or any adjoining street or public place, for the purposes aforesaid, for as long time as they shall from time to time think necessary; and also that they or their respective surveyors, inspectors, or other officers for the time being, shall or may from time to time direct and cause the course of any gutter or channel, running in or through any streets or public places within their respective parochial or other districts, to be turned or altered in such manner as they shall think proper, and to direct and cause the grates already placed or hereafter to be placed over any sewers (at their charge) to be removed and replaced in such manner and at such place and places as they shall think proper; and also that they or their respective surveyors, inspectors, or other officers for the time being, may (at such their charges) raise, sink, or otherwise alter, or cause or direct to be raised, sunk, or altered, any pipes or plugs, or the situation or position of any pipes or plugs of any water or gaslight companies, or any of the leaden or other pipes which may be laid into or from any of the mains or pipes of any of the said companies, when and as often and in such places as they or their respective surveyors, inspectors, or other officers for the time being shall deem expedient, for the purpose of the better paving or repairing or keeping in repair the pavement of the streets or public places within their respective parochial or other districts, but with as little detriment and inconvenience to the said companies, as in the judgment of the said surveyors, inspectors, or other officers, the circumstances will permit.

May stop up streets during reparations; and may alter the channels therein;

and may raise or lower pipes.

Pavements not to be removed without permission.

53. And be it further enacted, that no person or persons shall take or break up, or cause to be taken or broken up, any pavement in any street or public place in any parochial or other district within the jurisdiction of this Act, or make any alteration therein, under any pretence whatsoever, without the consent of the commissioners or trustees, or other persons having the control of the pavements in such parochial or other district, or their surveyor or surveyors of the pavements for the time being, first obtained and certified under the hand or hands of their clerk or clerks, or surveyor or surveyors for the time being; and that all and every person and persons to whom such consent shall be granted, shall be subject and liable to all the provisions in this Act contained in respect to the water and gaslight companies and the commissioners of sewers, as to the reparation of the pavements, and as to the removal of all rubbish and other obstructions, and as to the provision of bars, watchmen, and other securities, and to all penalties by this Act imposed on the breach of any of such provisions respectively, and to such other conditions and regulations as the said commissioners or trustees, or other persons

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consenting as aforesaid, shall stipulate and direct, and shall obey and perform the same and every of them (*a*); and that in case any person or persons (except water and gaslight companies and the commissioners of sewers, and who are to conform to the particular provisions of this Act relating to them), shall take or break up, or cause to be taken or broken up, or shall wilfully damage any pavement in any streets or public places, or shall make or cause to be made any alteration therein, without such consent as aforesaid, certified as aforesaid, then any and every such person or persons in every such case so offending, shall for each and every such offence forfeit and pay a sum not being less than £5, nor exceeding £10; and also for each and every square foot of such pavement exceeding one foot so taken or broken up or altered, or so wilfully damaged, shall forfeit and pay any sum not being less than £5 nor exceeding £10, to be recovered in the same manner in which other penalties and forfeitures are hereinafter directed to be recovered by virtue of this Act.

Private drains also to be cleansed.

57. And be it further enacted, that whenever from time to time or at any time hereafter it shall appear to the commissioners or trustees, or other persons having the control of the pavements of the streets and public places in any parochial or other district within the jurisdiction of this Act, or to any two or more of them, or to their surveyor or surveyors for the time being, or any of them, that any private drain, sewer, cesspool, gutter, or watercourse, running beneath or above, or communicating with any other drain or sewer beneath any of the pavements of any of the streets or public places in any such parochial or other district, doth require to be repaired, amended, altered, emptied, or cleansed, it shall and may be lawful to and for the said commissioners or trustees, or other persons having the control of such pavements as aforesaid, or any two or more of them, or their surveyor or surveyors as aforesaid for the time being, or any of them, to give or cause to be given a notice or notices under their hands, or under the hand or hands of such surveyor or surveyors of pavements for the time being, to or for the owner or owners or for the occupier or occupiers of all or any messuages, houses, lands, or other hereditaments to whom such drain, sewer, cesspool, gutter, or watercourse shall belong, or by whom the same shall be used or enjoyed, or from whose messuages, houses, lands, or hereditaments any such drain, sewer, gutter, or watercourse shall proceed or flow, or wherewith the same or any such cesspool shall communicate, well and sufficiently to repair, amend, alter, empty, or cleanse the same and every part thereof; and in case any such owner or owners, occupier or occupiers, within three days after any such notice shall be given or left as aforesaid, shall not well and effectually repair, amend, alter, empty, or cleanse any such drain or sewer and every part thereof, pursuant to such notice, and to the satisfaction of the said commissioners or trustees or other persons as aforesaid, or of their surveyor or surveyors for the time being, then it shall and may be lawful to and for the said commissioners or trustees or other persons as aforesaid, or for their surveyor or surveyors for the time being, to direct such drain, sewer, cesspool, gutter, or watercourse to be repaired, amended, altered, emptied, or cleansed, with such materials and in such manner as they or he may direct, and by such person or persons as they or he may from time to time appoint; and that the amount of the charges and expenses incurred thereabouts, and also of taking up, relaying,

(*a*) See section 109 of 18 & 19 Vict, c. 120, *ante*.

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or repairing any pavements in any streets or public places which may for those purposes or any of them be taken up, shall be ascertained and determined by such surveyor or surveyors of pavements as aforesaid, and shall be certified by him or them to such owner or owners, occupier or occupiers, and shall be paid by him or them within the same time, and may be recovered, with the same penalties in case of nonpayment, in such and the same manner, and by such and the same proceedings, as are by this Act authorized and directed for the ascertaining and determining, certifying and recovering any moneys to become due and to be recovered from any person whomsoever, for the costs and charges of repairing or paving or repaving any pavements of any streets or public places by the commissioners or trustees or other persons having the control of the pavements in any streets or public places in any parochial or other district within the jurisdiction of this Act.

Posts may be erected for the preservation of the pavements and prevention of accidents.

58. And be it further enacted, that the said commissioners or trustees or other persons having the control of the pavements of the streets and public places in any parochial or other district within the jurisdiction of this Act, may cause posts of wood, stone, or iron to be set up near or adjoining the foot pavements, in such part or parts of all or any of the streets or public places within their respective parochial or other districts, as they shall judge necessary; and also shall and may set up posts and rails near or adjoining to any vacant ground, or other exposed or dangerous place, abutting upon or adjoining to any of the streets or public places in such parochial or other district, in case they shall think proper so to do, for preventing accidents or casualties; and if any person or persons shall wilfully or carelessly knock down, break, damage, or injure such posts or rails, or any of them, every person so offending shall for every such offence forfeit and pay any sum not being less than 40*s.* nor exceeding £10; and shall also make a full satisfaction (to be ascertained by the justice before whom such offender or offenders shall be convicted), to such commissioners, trustees, or other person or persons having the control of the pavements in the parochial or other district within which the offence shall be committed, for the damage so done; and that such penalty and satisfaction shall be recovered in the same manner in which penalties and forfeitures are hereinafter directed to be recovered by virtue of this Act.

Commissioners, &c., may appoint scavengers (*a*).

59. And be it further enacted, that it shall be lawful for the commissioners, trustees, or any other persons having the control of the pavements in the streets or public places in any parochial or other district within the jurisdiction of this Act, and who by any local Act or Acts of parliament relating thereto are also authorized and empowered to direct the cleansing of the streets or public places within such parochial or other district, at any time or times hereafter to agree by private contract or by public auction, or by tender or proposal if they shall think fit, for any time not exceeding three years, with any person or persons to be the scavenger or scavengers, raker or rakers, cleanser or cleansers of the streets and public places within the said parochial or other district: and such person or persons, on a certain day in every week, and oftener when thereunto required by any three or more of the said commissioners or trustees, or other persons as aforesaid, or by the surveyor of the pavements of such parochial

(*a*) Compare section 125 of 18 & 19 Vict. c. 120, *ante*.

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or other district, or any inspector or other officer or person appointed by them or any of them, shall bring or cause to be brought convenient carriages into all such streets or public places where such carriages can be drawn near or pass unto, and at or before their approach, by bell, horn, clapper, or otherwise by a loud noise or cry, shall give notice to the inhabitants, and shall give the like notice in every other place into which the said carriages cannot pass and abide, and such scavengers, rakers, or cleansers shall take and carry away, or cause to be taken and carried away, from the respective houses and premises of the inhabitants or occupiers, their soil, ashes, cinders, rubbish, dust, dirt, and filth, and all which the said scavengers, rakers, or cleansers, shall carry away, or cause to be carried away, at their own costs and charges, upon pain of forfeiting a sum of 40s. for every neglect or default (except nevertheless all such rubbish, earth, dust, and filth as shall be occasioned by building, repairing, amending, or altering any house or houses, or any other building or buildings, or by cleansing or repairing any drain or sewer); and also that the said rubbish, earth, dust, or soil thereby occasioned, and every part thereof, within the space of twelve hours after the same or any part thereof shall be first left or placed in any street or public place, shall be carried away by or at the charge of the owner or owners, occupier or occupiers of such houses and buildings, or by the commissioners of such sewers respectively as aforesaid: and that such owners or occupiers or commissioners neglecting to remove the same, and every part thereof, or to cause the same to be removed within the time above limited, shall forfeit and pay the sum of £5 for every neglect to remove the same within the time above limited; and also that if any person or persons shall refuse to permit such other soil, ashes, cinders, rubbish, dust, dirt, or filth to be taken away by the scavengers, rakers, or cleansers, or other persons appointed by and agreeing with the said commissioners or trustees, or other persons as aforesaid, then every such person or persons so offending shall in like manner forfeit and shall pay the like sum of £5: Provided always, that it shall and may be lawful to and for the said commismissioners, trustees, or other persons having the control as aforesaid, either to contract and agree with and to appoint the same person or persons, or a different person and other persons, to be the scavengers, rakers, or cleansers, within their parochial or other district, of the streets or public places therein, and to be the persons to collect and carry away and possess and retain the soil, ashes, cinders, rubbish, dust, dirt, and filth from the houses and premises within their respective parochial or other districts, as they shall deem most expedient; but that the right and benefit of such soil, ashes, cinders, rubbish, dust, dirt, and filth shall belong exclusively to the person or persons who shall be from time to time by the said commissioners or trustees, or other persons as aforesaid, appointed to collect and possess the same; anything in any local Act or Acts of parliament or in this Act to the contrary notwithstanding.

Dust to be removed only by scavengers so appointed.

60. And be it further enacted, that if any person or persons, other than the scavengers, rakers, or cleansers of any parochial or other district, or the other person or persons employed or appointed by or contracting with the said commissioners or trustees, or other persons as aforesaid, to collect and retain the dust, cinders, or ashes within their respective parochial or other district, or those employed by and under such person or persons, shall on any pretence whatsoever go about to collect or gather, or shall ask for, receive, or carry away any

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dust, cinders, or ashes (*a*), it shall and may be lawful for any justice of the peace for the city, borough, or county within which such parochial or other district may be situate, upon complaint to him made, to grant a warrant to bring before him such offender or offenders, and also for any person or persons who shall see any such offence committed to seize, and also for any other person or persons to assist in seizing, the offender or offenders, together with the horses, asses, cattle, carts, trucks, wheelbarrows, or other carriages, or implements made use of for carrying the same away; and by the authority of this Act and without any other warrant, to convey him, her, or them before such justice of the peace, or any justice of the peace for the said city, borough, or county; and such justice shall and he is hereby authorized and required to examine upon oath the person or persons apprehending such offender or offenders, and any witness or witnesses who shall appear to give information or evidence touching such offence; and if the party or parties shall be convicted of going about to collect or gather, or of asking for, receiving, or carrying away any dust, cinders, or ashes from any house or other premises within any parochial or other district within the jurisdiction of this Act, not being the person or persons employed or appointed by or contracting with the said commissioners or trustees, or other persons having the control of the pavements within such parochial or other district, to collect and possess the dust, cinders, and ashes from the houses and premises therein, or not acting with or under his or their authority, he, she, or they, shall respectively, for the first offence, forfeit and pay the sum of £10; for the second offence, the sum of £15; and for the third and every other subsequent offence, the sum of £20; and one moiety of which respective penalties shall be paid to the informer or informers, or to the person or persons who shall apprehend the offender or offenders, and the other moiety shall be paid and shall belong to the person or persons so employed or appointed by or contracting with the said commissioners or trustees, or other persons as aforesaid; and if such offender or offenders shall not on conviction pay the said penalty or penalties, such justice is hereby required to direct such horses, asses, cattle, carts, trucks, wheelbarrows, or other carriages or implements which shall have been so seized, to be appraised and sold; and after deducting out of the moneys to arise by such sale the penalty or penalties incurred, together with the reasonable charges and expenses of such warrant, and of such distress, appraisement, and sale, the overplus thereof shall be returned upon demand to the party or parties whose horses or other things shall be appraised and sold; and in case there shall have been no such seizure as aforesaid, or if the horses, asses, cattle, carts, or other things which shall be appraised and sold, shall not produce a sufficient sum of money to pay the said penalty or penalties, charges, and expenses, then if such offender or offenders shall not upon the conviction pay the said penalty or penalties, or such part or parts of the said penalty or penalties, charges, and expenses, which shall remain over and above the produce of the horses, asses, cattle, carts, and other things so seized and sold, then such justice is hereby required to commit such offender or offenders to the common gaol or house of correction for the city, borough, or county where such parochial or other district shall be situate, there to be kept to

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(*a*) Ashes from a brass founder's furnace containing particles of metal not "dust, cinders, or ashes," within this section; *Law* v. *Dodd*, 17 L. J. M. C. 65.

hard labour for any time not exceeding thirty days, unless such penalty or penalties, and charges and expenses, and every part thereof, shall be sooner paid and satisfied. Section 60.

61. And be it further enacted, that in case such person or persons so employed or appointed by or contracting with the said commissioners or trustees or other persons for the purposes aforesaid, shall neglect for the space of seven days to bring or cause to be brought carts or proper carriages into all the streets or public places as aforesaid where such carriages can pass, and to give notice in manner aforesaid to the inhabitants of their coming, for the purpose of taking away such dust, dirt, soil, rubbish, filth, cinders, and ashes, and to give the like notice in every place into which the said carts and carriages cannot pass, or to take away and remove all such dust, dirt, soil, rubbish, filth, or cinders, or ashes from the houses and premises of all and every the inhabitants of such streets or public places, or from such part or parts of such houses or premises where such dust, dirt, soil, rubbish, filth, cinders, and ashes shall be deposited, that then (after twenty-four hours' notice given to such person or persons so employed or appointed by or contracting with the said commissioners or trustees or other persons for the purposes aforesaid, or left for him or them at his or their usual house or houses, yard, or other premises, requiring him or them to bring or cause to be brought carts or carriages to take away their dust, dirt, filth, cinders, or ashes, and to take away and remove the same from their respective houses and premises), it shall and may be lawful for such of the inhabitants of such of the said streets or public places, who shall have given such notice as aforesaid, to give away or to sell their dust, dirt, filth, cinders, or ashes to any person or persons whomsoever; and that such person or persons who shall take and carry away the said dust, dirt, filth, cinders, or ashes, shall not be subject or liable to any penalty or penalties for so doing upon every such neglect; anything in this Act or in any local Act or Acts of parliament contained to the contrary thereof notwithstanding. On the neglect of scavengers to remove dust for seven days, the dust may be removed by any other person.

62. And be it further enacted, that no scavenger, raker, or cleanser, or any other person, shall sweep, rake, or place any of the slop, mud, dirt, dust, rubbish, ashes, filth, or soil found or being in any streets or public places in any parochial or other district within the jurisdiction of this Act, or any other slop, mud, dirt, dust, rubbish, ashes, filth, soil, or other articles or things, over any grate or grates placed above or communicating with any common or public drain, or sewer, or into any common or public drain or sewer; and that any and every scavenger, raker, or cleanser, or any other person or persons who shall so offend, shall for every such offence forfeit and shall pay the sum of £5, to be recovered in the same manner in which other penalties and forfeitures are hereinafter directed to be recovered by virtue of this Act. Dirt not to be swept into any common sewer.

63. And be it further enacted, that every occupier of any house, tenement, warehouse, shop, shed, coach-house, stable, chapel, meeting-house, or other public or private building in any street or public place in any parochial or other district within the jurisdiction of this Act, during the continuance of frost, or after or during the fall Footways to be swept daily during frost and snow (*b*).

(*b*) See 2 & 3 Vict. c. 47, s. 60, for further improving the police in and near the metropolis.

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of snow, from time to time, and at all times hereafter, shall once in every day before the hour of ten of the clock in the forenoon of each day, except Sunday, sweep and cleanse, or cause to be swept and cleansed, the footway all along the front side or back walls of their respective houses, tenements, warehouses, shops, sheds, coach-houses, stables, chapels, meeting houses, or other public or private building; and that every occupier who shall neglect so to do shall for every such offence forfeit and pay any sum not exceeding the sum of 10s., to be levied and recovered and applied in such and the same manner in which other penalties are by this Act hereinafter directed to be recovered and applied; and also that the owner or owners of any house or other tenements within the jurisdiction of this Act, which may be let, furnished, or in divided apartments, shall be deemed and taken, for the purpose of this provision, to be the occupier or occupiers of every such house or other tenement respectively.

Nuisances and annoyances from beating carpets, breaking horses, driving barrows and carriages on pavements, and throwing filth prohibited.

64. And be it further enacted, that if any person or persons shall, in any street or public place in any parochial or other district within the jurisdiction of this Act, at any time or times hereafter, beat or dust any carpet or carpets; or shall drive any carriage or carriages, for the purpose of breaking, exercising, or trying horses; or shall ride any horse, mare, or gelding, for the purpose of exercising, airing, trying, showing, or exposing such horse, mare, or gelding for sale (otherwise than by passing through such streets or other public places); or shall throw, cast, or lay, or shall cause, permit, or suffer to be thrown, cast, or laid, or to remain, any ashes, dust, dirt, rubbish, offal, dung, soil, blood, or other filth or annoyance, or any matter or thing, in or upon the carriageway or footway pavement of any such street or other public place in any parochial or other district within the jurisdiction of this Act; or shall kill, slaughter, scald, dress, or cut up any beast, swine, calf, sheep, lamb, or other cattle, in or so near to any of the said streets or other public places, so that any blood or filth shall run or flow upon or over, or be on any or either of such pavements: or shall run, roll, drive, draw, or place, or cause, permit, or suffer to be run, rolled, driven, drawn, or placed, upon any of the said footway pavements of any street or public place in any parochial or other district within the jurisdiction of this Act, any waggon, cart, dray, sledge, or other carriage, or any wheel, wheelbarrow, handbarrow, or truck, or any hogshead, cart, or barrel, or shall wilfully ride, lead, or drive any horse, ass, mule, or other beast, upon any of the footway pavements aforesaid, then and in every such case it shall and may be lawful to and for any justice of the peace for the city, borough, or county wherein any such parochial or other district may be situate, and he is hereby required, upon complaint to him made upon oath or affirmation of one or more credible witness or witnesses, to issue a summons requiring such offender or offenders to appear before him, at such time and place as shall be in such summons specified; or it shall and may be lawful to and for any person or persons whomsoever, who shall see any such offence committed, if he or they shall think proper, to seize, and also for any other person or persons to assist in seizing, such offender or offenders by the authority of this Act, and by such authority, and without any other authority or warrant whatsoever, to convey such offender or offenders before some justice of the peace for the city, borough, or county wherein any such parochial or other district may be situate; and upon the party or parties appearing in pursuance of such summons, or not appearing

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after having been so summoned, or being brought before such justice when so seized or otherwise, he the said justice shall proceed to examine upon oath or affirmation any witness or witnesses who shall appear or be produced to give evidence touching such offence ; and if the party or parties accused shall be convicted of any or either of the offences as aforesaid upon his or their own confession, or upon the oath or affirmation of one or more credible witness or witnesses as aforesaid, then and in every such case the person or persons so convicted shall forfeit and pay a sum not less than 40*s.* nor exceeding £5 for each and every offence ; and that one moiety of every such penalty shall be paid to the informer or informers, or to the person or persons who shall apprehend such offender or offenders ; and the other moiety thereof shall be paid to the treasurer or treasurers of the commissioners, trustees, or other persons having the control of the pavements in the streets or public places in the parochial or other district wherein any such offence or offences shall have been committed.

Annoyances from stalls, baskets, and wares and other matters prohibited, and punishable on renewal after notice; and all such articles may be seized and sold.(*a*)

65. And be it further enacted, that if any person or persons at any time or times hereafter shall set or place, or cause or permit to be set or placed by any servant or person employed by him, her, or them, or otherwise, any stall board, chopping block, show board on hinges or otherwise, basket, wares, merchandise, casks, or goods of any kind whatsoever ; or shall hoop, place, wash, or cleanse, or cause to be hooped, washed, or cleansed, any pipe, barrel, cask, or vessel, in or upon or over any part of the carriage or footways in any streets or public places in any parochial or other district within the jurisdiction of this Act ; or shall set out, lay, or place, or cause or procure, permit or suffer to be set out, laid, or placed, any coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck or other carriage upon any of the said carriage-ways (except such coaches, chariots, and chairs as have been or shall be hereafter licensed by the commissioners for regulating and licensing hackney coaches, chariots, and chairs, and which stand for hire according to the statutes and bye-laws made for those purposes), and also except for the necessary time of loading or unloading any cart, wain, waggon, dray, sledge, truck, or other carriage, or taking up or setting down any fare, or waiting for passengers when actually hired, or harnessing or unharnessing the horses from any coach, cart, wain, waggon, dray, sledge, truck, or other carriage ; or if any person or persons shall set or place, or cause to be set or placed, in or upon or over any of the said carriage or footways, any timber, stones, bricks, lime or other materials or things for building whatsoever (unless the same shall be enclosed as in and by any local Act or Acts of parliament, or by this Act, or some of them, may be directed), or any other matters or things whatsoever ; or shall hang out or expose, or cause or permit to be hung out or exposed, any meat or offal, or other matter or thing whatsoever, from any house or houses, or other buildings or premises belonging to or occupied by him, her, or them, over any part of either of such pavements, or over any area or areas of any houses or other buildings or premises, or shall place or put out, or cause or permit to be placed

(*a*) See 2 & 3 Vict. c. 47, s. 60, sub-sect. 7 (Metropolitan Police Act), and Streets Traffic Act, 1867, 30 & 31 Vict. c. 134; and 31 Vict. c. 5, s. 1, enacting that section 6 of last named Act shall not apply to costermongers carrying on their business in accordance with the regulations of the commissioners of police.

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or put out, any garden or other pots (except the same shall be perfectly secured from falling, to the satisfaction of the commissioners or trustees or other persons having the control of the pavements in any such parochial or other district, or of the surveyor of the pavements for the time being), or any other matter or thing, from and on the outside of the front or any other part of any house or houses, or other buildings or premises, over or next unto any such street or public place; and shall not immediately remove all or any such matters or things, being thereunto required by any surveyor or surveyors of pavements, or by any other person or persons employed or appointed by the commissioners, trustees, or other persons having the control of the pavements in any parochial or other district; and whether the same shall have been so set or placed, exposed or put out by himself, herself, or themselves personally, or by any of his, her, or their servants, or by any person or persons employed by him, her, or them, and shall not continue and keep the same so removed; or if any person or persons, having in pursuance of any such requisition or requisitions as aforesaid, removed or caused to be removed any such stall board, show board, chopping block, basket, wares, merchandize, casks, goods, coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck, carriage, timber, stones, bricks, lime, meat, offal, garden pots, or other matters or things, shall at any time thereafter again set, lay, or place, expose or put out, or cause, procure, permit or suffer to be again set, laid, or placed, exposed or put out, the same or any of them, or any other stall board, show board, chopping block, basket, wares, merchandise, goods, coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck, timber, stones, bricks, lime, meat, offal, garden pots, or other matters or things whatsoever (save and except as aforesaid), in or upon or over any of the carriage or footways of or next unto any streets or public places within the same parochial or other district as aforesaid; then and in every such case it shall and may be lawful to and for any justice of the peace for the city, borough, or county wherein the said parochial or other district may be situate, and he is hereby required, upon complaint to him made by any one or more credible witness or witnesses upon oath, to issue a summons requiring the person or persons accused of such offence, or the owner or owners of the goods, materials, meat, offal, garden pots, matters or things, or of the coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages, which shall be so set or placed, exposed or set out, or the master or masters of the person or persons, by whose servants, or by the person or persons employed by whom, such offence shall have been committed, to appear before him, or before any other justice of the peace for the same city, borough, or county, as shall be then or there present, at such time or place as shall be in such summons specified, and then and there to proceed to examine upon oath or affirmation any witness or witnesses who shall appear or be produced to give evidence touching such offence; and if the person or persons so offending shall be convicted of any or either of the offences aforesaid, upon his, her, or their own confession, or upon the oath or affirmation of one or more credible witness or witnesses as aforesaid, he, she, or they who shall be so convicted, and the owner or owners of such goods, materials, meat, offal, garden pots, matters or things, or of the coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages which shall be so set or placed, exposed or set out as aforesaid, and the master or masters, employer or employers of the person or persons so offending, shall forfeit and pay for the first offence the sum of 40*s.*,

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and for the second and every subsequent offence any sum not exceeding £5; and that such respective penalties shall be paid to the treasurer or treasurers of the commissioners, trustees, or other persons having the control of the pavements in the streets or public places in the parochial or other district wherein any such offence shall have been committed, or to such other person or persons as they shall direct and appoint; and also, that not only shall such penalties become payable and to be recovered, but that it shall and may be lawful to and for any person or persons appointed or to be appointed by the said commissioners or trustees or other persons as aforesaid for that purpose, without any warrant or other authority than this Act, to seize any such stall board, show board, chopping block, basket, wares, merchandise, casks, goods, coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck, or other carriage, together with the horse or horses, ass or asses, mule or mules, if any shall be thereunto belonging, with the harness, gear, and accoutrements thereof, or any such timber or other materials, or other matters or things aforesaid, or any of them; and in case any of the wares, goods, and merchandises so seized shall be perishable, or shall be articles of food, then the same shall be immediately forfeited, and such person or persons who shall seize the same shall deliver the same or cause the same to be delivered to the churchwardens or overseers of the poor, or to some of them, or to the master of any workhouse situate in the said parochial or other district, or of the parish whereunto such district shall belong; and the same shall and may be given and distributed by him or them unto one or among any one or more of the poor inhabitants of the said parochial or other district, or of such workhouse, to and for his or their benefit; but otherwise such person or persons shall cause the stall board, basket, cask, goods, coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck, or other carriage, horse or horses, asses or mules, or any materials and things so seized, to be removed to any place appointed for the reception thereof in any such parochial or other district, if any such there be, and otherwise to such place or places as he or they shall judge convenient, giving parole or written notice of such place or places whereunto the same shall be removed, unto the owner, driver, or other person having any interest in the goods, coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck, or other carriages, horses, asses, mules, materials, or other things so seized or removed, if he, she, or they shall be then and there present; and the same shall be there kept and detained until such owner, driver, or other person interested therein as aforesaid shall cause to be paid the said penalty, together with the charges for taking or removing the same, and of keeping such horse or horses, asses or mules, if any; and in case the goods, carriage, horses, materials, or other things so removed (not being perishable or articles of food) shall not be claimed, and the said penalty and charges be paid, within five days next after such removal thereof, then and in every such case it shall and may be lawful to and for the said commissioners or trustees, or other persons as aforesaid, or their surveyor of the pavements, or any other person to be appointed by the said commissioners or trustees or other persons as aforesaid, to order the same to be appraised and sold; and the overplus of the money arising by such sale shall be returned to the owner or owners thereof, if he or they shall have given such notice as aforesaid, after deducting the said penalty, and such costs, charges, and expenses attending such seizing, removing, keeping, appraising, and selling the same, as the said commissioners or trustees or other persons as aforesaid, or

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any surveyor of the pavements in any parochial or other district, shall ascertain and allow.

For the removal of nuisances and annoyances, a repetition of notices unnecessary.

66. And be it further enacted, that in all cases where by this Act, or by any local Act or Acts of parliament relating to any parochial or other district within the jurisdiction of this Act, it may be directed, required, and provided that any person or persons setting or placing any stall board, chopping block, basket, wares, merchandize, pipe, barrel, cask, or vessel, goods, timber, stones, bricks, lime, or any other materials, matters, or things, or causing or procuring the same or any of them to be set or placed upon any of the carriage or foot pavements or otherwise, contrary to the regulations herein or in any such local Act or Acts contained, in any of the streets or public places within the jurisdiction of this Act, or that any person or persons driving or placing any coach, cart, waggon, dray, wheelbarrow, handbarrow, sledge, truck, or other carriage, in or upon or over any of the foot pavements in any streets or places within the jurisdiction of this Act, or causing or procuring the same to be so driven or placed, shall have notice and be required to remove the same previous to such person or persons being subject or liable to the penalty or penalties imposed by virtue of such local Act or Acts or of this Act, and to the seizure, forfeiture, appropriation, appraisement, or sale of any such goods, materials, matters, and other things, coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages, in manner directed by such local Act or Acts or by this Act, then if any person or persons shall set or place any goods, materials, matters, or other things, or shall set, place, or drive any coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages upon or over the said pavements, or any of them, or any part thereof, at any time or times subsequent to his, her, or their having received such notice, or having been required to remove the same, or any other goods, materials, matters, or things, or any other coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages from off the said pavements or any of them, or shall cause or permit the same or any of them to be set or placed or driven by his or their servants, or by any person or persons employed by him or them; in any and every such case it shall not be necessary or requisite that any person or persons, seeing such offence or offences committed again, should require the removal of the said goods, materials, matters, or things, or coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages; but the same or any of them, being so again set, placed, or driven in, upon, or over the said pavements or any of them, or any part thereof, contrary to the directions of any such local Act or Acts of parliament, or of this Act, shall and may be seized, forfeited, removed, applied, detained, appraised, and sold, in manner herein provided as to any other goods, materials, matters, or things, or coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages, which shall not be removed on a requisition or notice being given so to do as hereinbefore provided; and the person or persons so committing the said offence or offences, and the owner or owners of the goods, materials, matters, or other things, or coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages which shall be so placed or driven, and the master or masters, employer or employers of the person or persons so offending, shall be subject and liable to the same penalty or penalties, forfeitures, proceedings, charges, and punishments, as if such person or persons offending had neglected or refused to remove

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the said goods, materials, matters, or other things, or coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages, when required so to do, under and by virtue of any local Act or Acts of parliament, or of this Act; and although the said notices or requisitions shall not have been repeated or again given to the person or persons committing or directing or permitting such offence or offences, or any of them; anything in this Act or in any local or other Act or Acts of parliament to the contrary thereof in anywise notwithstanding.

Hog-styes and other nuisances may be removed (*a*).

67. And be it further enacted, that in case any hog-stye, slaughter-house, horse-boiling establishment, or any other matter which, in the judgment of the commissioners or trustees, or other persons having the control of the pavements in any parochial or other district within the jurisdiction of this Act, is a nuisance to the other inhabitants of such parochial or other district or any of them, at any time or times hereafter shall be in any of the streets, lanes, or public places in any parochial or other district within the jurisdiction of this Act, it shall be lawful for the said commissioners or trustees, or other persons having the control of the pavement of the said streets and public places, upon complaint thereof to them made by any inhabitant, and after due investigation of such complaint, by notice in writing under the hand or hands of any of their surveyor or surveyors, or of their clerk or clerks for the time being, to order that every or any such hog-stye, necessary-house, slaughter-house, or other matter, being a nuisance, shall be forthwith remedied or removed; and if the same shall not be remedied or removed within seven days after such notice given to the owner or owners, occupier or occupiers of the premises wherein such nuisance or nuisances shall be situate, or left for him, her, or them at his, her, or their last or usual place or places of abode, or on the said premises, then every such owner or occupier so neglecting to remedy or remove such nuisance pursuant to such notice, and to the satisfaction of the said commissioners or trustees or other persons, or of their surveyor or surveyors of the pavements for the time being, shall forfeit and pay the sum of £10 for every such neglect and disobedience; and also it may be lawful to and for the said commissioners or trustees, or other persons, to indict or cause to be indicted such person or persons so neglecting or disobeying any such notice, at the then next or at any future general or quarter sessions or adjourned quarter sessions of the peace, for the city, borough, or county wherein such parochial or other district may be situate, for such nuisance, or for such disobedience and offence; and such person or persons being found guilty thereof, such nuisance or nuisances shall be removed, taken down, and abated according to law with regard to public or common nuisances, or may be subject to such punishment for a misdemeanor, as the justices assembled at a general quarter, or adjourned sessions for the said city, borough, or county, may direct.

Swine not to be kept nor to wander in the streets (*b*)

68. And be it further enacted, that no person or persons whomsoever, at any time or times hereafter, shall breed, feed, or keep any kind [or species of swine in any house, building, yard, garden, or other hereditaments situate and being in or within forty yards of any

(*a*) Compare section 91 of 25 & 26 Vict. c. 102, *ante*, and section 92 *et seq.*, of same Act.

(*b*) By 25 & 26 Vict. c. 102, 73, the powers of improving streets, &c., and for the suppression of nuisances given by this Act, are applied to the larger

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street or public place in any parochial or other district within the jurisdiction of this Act, nor shall suffer any kind or species of swine belonging to him or them to stray or go about in any street or public place in any parochial or other district within the jurisdiction of this Act; and that any person or persons who shall so offend, shall forfeit and pay for every such offence the sum of 40*s.*, and shall also forfeit the said swine and every of them unto the commissioners or trustees or other persons having the control of the pavements in any such parochial or other district; and that it shall and may be lawful for the said commissioners or trustees or other persons, or their surveyor or surveyors, inspector or inspectors, or any other officer or person or persons directed and appointed by them, and for any constables and headboroughs, at all times hereafter all such swine to seize, take, drive, and carry away, and sell for the best price that can be reasonably had; and the money thereby produced, after deducting all costs and charges of and incidental to such seizure, removal and sale, to pay to the treasurer or treasurers of the said commissioners or trustees or other persons, or to such other person or persons as the said commissioners or trustees or other persons as aforesaid shall from time to time direct and appoint.

Lime not to be slacked in the streets.

69. And be it further enacted, that if any person or persons at any time or times hereafter shall sift, screen, or slack, or cause to be sifted, screened, or slacked, any lime in any street or public place in any parochial or other district within the jurisdiction of this Act, or shall cause the same to be done, without the consent of the commissioners or trustees or other persons having the control of the pavements in the streets or public places in such parochial or other district, or of their surveyor or surveyors of pavements for the time being, and without also previously erecting an hoard or inclosure, with the license of the surveyor or surveyors of the pavements in any such parochial or other district first obtained, as directed in any local Act or Acts of parliament relating to any such parochial or other district, or in this Act, and which hoard or enclosure shall inclose all such lime when and as it shall be sifted, screened, or slacked; then he, she, or they shall forfeit and pay for every such offence a sum not being less than 10*s.* nor exceeding £5, to be recovered in the same manner in which other penalties are hereafter directed to be recovered by virtue of this Act.

Entrances to cellars and coalholes to be covered and secured (*a*)

70. And be it further enacted, that if at any time or times hereafter the owner or owners, occupier or occupiers, of any house, building, or premises, in any parochial or other district within the jurisdiction of this Act, having any iron or wooden rails or bars over the areas or opening to any kitchens or cellars or other part or parts of his or their house, building, or premises, beneath the surface of the foot pavements of any streets or public places in any such parochial or other district, or having any doorway or entrance into the base-

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districts—namely, the metropolis as defined by the Metropolis Management Act, 1855. Held, that the powers conferred by the 68th section of this Act, being a power of *prevention* and not of *suppression*, did not apply to the larger district; *Vestry of Chelsea* v. *King*, 34 L. J. M. C. 9; compare section 91 of Metropolis Management Amendment Act, 1862, imposing a penalty for keeping swine in improper situations, &c.; also section 8 of Nuisances Removal Act, 1855, and 2 & 3 Vict. c. 47 (Metropolitan Police), s. 60, sub-section 5.

(*a*) See 18 & 19 Vict. c. 120, ss. 101 and 102, *ante*.

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ment or cellar story thereof, shall not either keep the same or the walls of such kitchens or cellars, in sufficient and good repair, or safely and securely guard and constantly keep the same securely guarded by a rail or rails, or cover the same over with a strong flap or trap-door, according to the nature of the case, and to the satisfaction of the commissioners or trustees or other persons having the control of the pavements in such parochial or other district, or of the surveyor or surveyors of the pavements in any such parochial or other district for the time being, or of any inspectors or other officers or persons appointed by the said commissioners, trustees, or other persons as aforesaid, or some of them, and so as to prevent danger to persons passing and repassing; or if any such occupier or occupiers do or shall leave open, or not sufficiently and substantially cover and keep covered and secured to such satisfaction as aforesaid, any coal or other hole, funnel, trap-door, or cellar-flap, belonging to or connected with his, her, or their respective houses, buildings, or premises (save and except only during such reasonable time as any coals, wood, casks, or other things shall be putting down or taking out of any such vault or basement story, or during such reasonable time as the flap, trap-door, or covering thereof shall be altering, repairing, or amending); or if such owner or owners, occupier or occupiers, shall not repair, and from time to time keep in good and substantial repair, to the satisfaction of the said commissioners or trustees or other persons, or of the said surveyor or surveyors, inspectors, or other persons appointed by the said commissioners or trustees or other persons as aforesaid, all and every or any such iron or wooden rails, guard rails, flaps, trap-doors, and other covering; then and in every such case the person or persons neglecting so to do shall for every or any such offence forfeit and pay any sum not being less than 40s. nor exceeding £5, to be recovered in such and the same manner in which other penalties are hereafter directed to be recovered by virtue of this Act; and that in any or either of such cases of neglect, it shall and may be also lawful to and for any two or more of the said commissioners or trustees, or other persons as aforesaid, and without the authority of any public or general meeting, or for their surveyor or surveyors of the pavements for the time being, or for their inspectors, or for any other person by such commissioners or trustees or other persons appointed as aforesaid, to cause all and every such doorways, entrances, holes, and funnels to be well and securely covered over and guarded, and all iron or wooden rails, or guard rails, flaps, trap-doors, or coverings, to be well and substantially repaired or renewed, by such person or persons as they shall think proper to employ, and with such materials and in such manner as they or he may direct, and that all the costs, charges, and expenses attending the same be ascertained and certified by the surveyor or surveyors of the pavements, in any such parochial or other district, and shall be borne and paid by the owner or owners, occupier or occupiers, or other person or persons so neglecting to repair and make good the same in manner aforesaid; and that if such costs, charges, and expenses shall not be so paid by such person or persons to the said surveyor or surveyors, or to such other person or persons as he or they shall or may appoint to receive the same within twenty-four hours after an account of the costs, charges, and expenses so ascertained and certified shall have been given to or left for such person or persons at or on such houses, buildings, or premises, then double the amount of the sum so certified shall become due and payable from such person or persons, over and above the other penalties hereby imposed, and shall and may be recovered and levied in such

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and the same manner in which any other penalties are hereinafter directed to be recovered, or in which any moneys may be recovered from any water or gaslight companies, or any other persons, for or on account of any costs and charges of relaying any pavements, by virtue of any local Act or Acts of parliament relating to such parochial or other districts, or of this Act.

Holes excavated for vaults to be inclosed.

71. And be it further enacted, that if at any time or times hereafter any person or persons shall dig or make or cause to be dug or made any hole, or leave or cause to be left any hole before any vacant ground, or before or behind or on the side of any house or other tenement or building erected or being erected or about to be erected in and adjoining to any street or public place formed or to be formed or forming in any parochial or other district within the jurisdiction of this Act, for the purposes of making any vault or vaults, or the foundation or foundations to such houses or other buildings, or for any other purpose whatsoever, and shall not forthwith inclose the same in a good and sufficient manner, to the satisfaction of the surveyor or surveyors of the pavements for the time being to the commissioners or trustees or other persons having the control of the pavements in such parochial or other district, or shall keep up or cause to be kept up and continued any such enclosure for any time which shall be longer than shall be absolutely necessary in the opinion of the said commissioners or trustees or other persons as aforesaid, or of their surveyor or surveyors of pavements for the time being, or shall not, when thereunto required by such surveyor or surveyors, or either of them, well and sufficiently fence or inclose any such hole or holes, or area or areas, or space or spaces, opened or left open, and intended for an area or areas, foundation or foundations, or for any other purpose whatsoever, in the front of or behind or on the side of such vacant ground, house, or other tenement or building in and adjoining to any such street or public place formed or to be formed or forming, within six hours after he or they shall be required so to do by the said surveyor or surveyors of pavements, and in the manner and with such materials as he or they shall direct, and to his or their satisfaction, then and in every or any such case he or they so offending shall forfeit and pay for every such offence, and for every such refusal or neglect, any sum not being less than 40*s.* nor exceeding £5, to be recovered in the same manner in which other penalties are hereinafter directed to be recovered by virtue of this Act.

Encroachments and projections to be regulated (*a*).

72. And be it further enacted, that it shall and may be lawful to and for the said commissioners or trustees or other persons having

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(*a*) See ss. 101, 102, 119, and 120 of 18 & 19 Vict. c. 120, and 25 & 26 Vict. c. 102, ss. 124, 125, *ante*; and ss. 153, 154, 156, of City of London Sewers Act, 1849; 11 & 12 Vict. c. 163. See also rules as to projections in section 26 of Metropolitan Buildings Act, 18 & 19 Vict. c. 122. It was decided in a case under the former building Act, 7 & 8 Vict. c. 84, that its provisions did not authorize a projection contrary to this Act, and that a magistrate had power to order its removal; *R.* v. *Ingham*, 17 Q. B. 884. And see *R.* v. *Pratt*, 24 L. T. 235. Power to remove without compensation, was held to be limited to things projecting over the public way, and not to extend to the railings of the area of a house: *Bouverie* v. *Miles*, 1 B. & Ad. 38.

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the control of the pavements of the streets and public places in any parochial or other district within the jurisdiction of this Act, and for their surveyor or surveyors of pavements, from time to time and at all times hereafter to regulate or remove, in such manner as he or they shall from time to time judge proper, all signs, sign irons, sign posts, and other posts, sheds, penthouses, spouts, gutters, steps, stairs, cellar doors, bow and other windows, projecting over any part of either of the footways or carriage-ways of any of the said streets or public places, window shutters, stumps, shades, rails, pales, palisades, porches, bulks, show glasses and show boards, pools, cesspools, cisterns and reservoirs for water, and all other or any fixed or moveable projections, on hinges or otherwise, from the fronts or sides of any house or houses or other buildings, and now affixed or belonging to, or which shall be hereafter affixed or belonging to any house or houses or other buildings in or abutting upon or contiguous to any streets or public places in any parochial or other district within the jurisdiction of this Act, or to the owner or owners or occupier or occupiers of any such houses or other buildings, and which in the judgment of the said commissioners or trustees or other persons as aforesaid, or of their surveyor or surveyors of pavements for the time being, then do or may obstruct the circulation of light and air, or are inconvenient or incommodious to any passengers along the carriage or foot ways of any of the said streets or public places of or within the jurisdiction of this Act, or any part thereof, or to any inhabitants of such parochial or other district; and that the same, and all the roofs, cornices, eaves, and penthouses of or belonging to such houses or buildings respectively, and all water pipes or trunks affixed or belonging or to be affixed or belonging to any such houses or other buildings respectively, shall from time to time and at all times be regulated, removed, placed, and altered by the owner or owners or occupier or occupiers of such houses or other buildings respectively, as in the judgment of the commissioners or trustees or other persons as aforesaid, or their surveyor or surveyors of the pavements for the time being, shall be necessary or desirable for the public convenience; and that in case any person or persons owning or occupying any house or houses or other buildings in or abutting upon or contiguous to any streets or public places in any parochial or other district within the jurisdiction of this Act, on being required by any notice signed by any three or more commissioners or trustees or other persons having the control of the pavements in the parochial or other district within which the said house or houses or buildings may be situate, or by their surveyor or surveyors of pavements for the time being, given to or left for such person or persons, or any of them, in or at or upon the said house or houses or other buildings or any of them, or at his or their usual or last known place or places of abode, shall not from time to time and at all times immediately either entirely remove or alter, to the satisfaction of the said commissioners or trustees or other person having the control of the pavements in any such parochial or other district, or of their surveyor or surveyors of the pavements for the time being, any signs, sign irons, sign posts, and other posts, sheds, penthouses, spouts, gutters, steps, stairs, cellar doors, bow and other windows, window shutters, stumps, shades, sun blinds, awnings, rails, pales, palisades, porches, bulks, show glasses and show boards, pools, cesspools, cisterns, and reservoirs, or other things then fastened or affixed, or belonging to or connected with any such house or houses or other buildings, and all other fixed or moveable projections or things projecting from the fronts or sides of, or added or appendant or belonging to any house or houses or other buildings, or to the owner or

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owners or occupier or occupiers of any such house or houses or other buildings, over any footways or carriageways of any streets or public places within the jurisdiction of this Act, or any part, or any of them, and the roofs, cornices, eaves and penthouses, waterpipes or trunks, affixed or to be affixed, or belonging or to belong unto or connected with any of such houses or buildings respectively; then and in every such case any and every such person or persons refusing or neglecting immediately so to do, to the satisfaction of the said commissioners or trustees or other persons as aforesaid, or of their surveyor or surveyors of the pavements for the time being, shall for every such offence, and upon every such refusal or neglect, forfeit and pay a sum not being less than 40*s.* nor exceeding £5, and which may be recovered in the same manner in which other penalties are hereinafter directed to be recovered by virtue of this Act.

Slop to be carried only in covered carts.

73. And be it further enacted, that if any person or persons at any time or times hereafter shall drive or cause to be driven any cart or other carriage with any soap lees, night soil, ammoniacal liquor, slop, filth, or channel mire or dirt therein, through or in any of the streets or other public places in any parochial or other district within the jurisdiction of this Act, without such cart or other carriage having a proper covering or boards called flash boards, to prevent the same from slopping or spilling in any of the said streets or other public places; or shal at any time or times hereafter drive or cause to be driven any cart or other carriage with any soap lees, night soil, or ammoniacal liquor therein, through or in any of the streets or public places in any parochial or other district within the jurisdiction of this Act, between the hours of six of the clock in the morning and eight of the clock in the evening of any day; or shall fill any such covered cart or other carriage, so as to turn over or cast any soap lees, night soil, ammoniacal liquor, slop, mire, or channel dirt or filth, in or upon any of the said streets or other public places; it shall and may be lawful for any person or persons whomsoever to seize and apprehend and to assist in seizing and apprehending the offender or offenders, and by the authority of this Act, and without any other warrant or authority, to convey him or them before some justice of the peace for the city, borough, or county wherein such parochial or other district shall be situate; and which justice is hereby authorized and required to hear evidence and determine upon such offence; and every person so offending shall for every such offence forfeit and pay the sum of £5, to be recovered in the same manner as other penalties are hereinafter directed to be recovered by virtue of this Act: Provided always, that in case the person or persons so offending cannot be apprehended, then the owner or owners of such cart or carriage in which such soap lees, night soil, ammoniacal liquor, slop, filth, mire, or channel dirt shall be put or placed, and also the employer or employers of the person or persons so offending, shall be liable to and shall forfeit and pay such penalty as aforesaid, to be recovered as aforesaid.

Certain nuisances fineable.

74. And be it further enacted, that if any person or persons at any time or times hereafter shall empty or begin to empty any bog-house or bog-houses, or to take away any night soil from any house or houses or premises within the streets or other public places in any parochial or other district within the jurisdiction of this Act, or shall come with carts or carriages for that purpose (save and except between the hours of twelve of the clock in the night and five of the clock in the morning from Lady-day to Michaelmas in every year, and between twelve of the clock at night and six of the clock in the morning from

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Michaelmas to Lady-day in every year); or if any person or persons shall put up or cast or cause to be put or cast out of any cart or tub or otherwise any night soil in or near any of the streets or other public places in any parochial or other district within the jurisdiction of this Act, it shall be lawful for any constables, headboroughs, patrols, beadles, or watchmen (and they are hereby strictly charged and required and directed so to do), or for any other person or persons whomsoever, without any warrant or other authority than this Act, to apprehend and carry any person or persons guilty of the said offences, or either of them, to any watchhouse of the parochial or other district wherein such offence shall have been committed, or to any other place of confinement or security, and from thence to convey him, her, or them, as soon as conveniently may be, before some justice of the peace, for the city, borough, or county wherein such parochial or other district shall be situate, who (upon oath or affirmation made of such offence or offences as aforesaid) shall commit every such offender or offenders to the house of correction for the same city, borough, or county wherein such parochial or other district shall be situate as aforesaid, for any time not exceeding thirty days, to be computed from the day of commitment; and the owner or owners of any carts, carriages, horses, or beasts employed in and about emptying or removing such night soil, or coming for that purpose (save and except within the hours hereby allowed), or the employer or employers of any person or persons who shall so put or cast out any such night soil, shall forfeit the sum of £5 for every such offence; and any person or persons may seize such carts or carriages, or the horses or beasts drawing the same, with the gears, harness, and accoutrements, and remove or take such carts or carriages, horses or beasts, to such place in the said parochial or other district, as may be appointed for such or similar purposes, if any such there be, or otherwise to such place or places as the surveyor or surveyors of the pavements of such parochial or other district shall order and direct, there to be detained until the owner or owners, employer or employers, shall pay the said penalty, together with all costs, charges and expenses incurred in and about or relating to the seizure, removing, and keeping the said carts or carriages or horses, or in any manner incident thereto; and in case the same shall not be demanded, and the said penalty, and all such costs, charges, and expenses, to be ascertained and determined by the surveyor or surveyors of the pavements of the said parochial or other district for the time being, and within five days next after such seizure, then it shall be lawful for such surveyor or surveyors to order the same to be appraised and sold, and the money arising therefrom shall be applied in payment of such penalty and costs, charges and expenses; and after deducting the same, the overplus, as so ascertained by the said surveyor or surveyors, may be paid to the owner or owners thereof, when he or they shall apply for the same; and also that one moiety of such penalty shall belong to and shall be paid to or among the person or persons giving information of such offences, or any of them, and apprehending the offender or offenders, and seizing, removing, and detaining such carts or carriages, and horses or beasts, as hereinbefore is authorized and directed.

Hoards to be erected but not without leave (*a*).

75. And be it further enacted, that no person or persons whomso-

(*a*) A ladder placed against a house for the purpose of whitewashing, was held not to be within this provision; *Davey* v. *Warne*, 14 M. & W. 199. See 18 & 19 Vict. c. 120, s. 122, *ante*.

Section 75. ever shall erect, place, set up, or build, in any street or other public place in any parochial or other district within the jurisdiction of this Act at any time or times hereafter, any hoard or scaffolding, or place or erect any posts, bars, rails, boards, or other thing, by way of inclosure, for the purpose of making mortar, or of depositing or sifting, screening or slacking any bricks, stone, lime, sand, or any other materials for building or repairing any house or other tenement or erection, or for other works, or for any other purpose, without leave or licence first had and obtained under the hand or hands of the surveyor or surveyors for the time being of the pavements of such parochial or other district, who is and are hereby required to grant the same forthwith for the purpose of making mortar, and depositing or sifting, screening, or slacking any bricks, stone, lime, sand, or any other materials for building or repairing any house or other tenement or erection specifying therein the length of time for which the same when so erected or set up may be continued, and giving such other directions respecting the same as he or they may think necessary, on being paid by every person so applying for such licence the sum of 2s. 6d.; and that if any person or persons shall erect, place, set up, or build, or cause or permit to be erected, placed, set up, or built, any such hoard or scaffolding, or any inclosure, posts, bars, or rails, or any other matter or thing for the purposes aforesaid, or for any other purpose, without the leave or licence, signed as aforesaid, of the said surveyor or surveyors of the pavements so had and obtained, or shall erect, set up, or build the same, or cause or permit the same to be set up or erected in any other manner, or to be continued for any longer time than shall be allowed or expressed in such licence, then and in either of the said cases such person or persons, or the person or persons by whom he or they shall or may be employed, shall forfeit and pay the sum of 10s. for every day that the same shall have been and shall be set up and continued; and also that it shall and may be lawful for the said commissioners or trustees or other persons having the control of the pavements of such parochial or other district, or for the said surveyor or surveyors of the pavements for the time being, to cause the same to be pulled down and removed, and the same and all the materials thereof, and of every part thereof, to be kept and detained until such person or persons shall and do pay to the said surveyor or surveyors of the pavements, or to the person or persons in whose custody the same shall be, all the penalties incurred by such person or persons, together with the charges of pulling down, removing, and keeping the same, to be ascertained and determined by the said surveyor or surveyors; and in case the same shall not be claimed, and the said penalties and charges aforesaid shall not be paid within the space of five days next after the pulling down and removal thereof, then it shall and may be lawful to and for the said commissioners or trustees, or other persons as aforesaid, or for their surveyor or surveyors of the pavements, to order or cause the same to be appraised and sold; and the money arising therefrom, after deducting all the said charges, shall be paid to the treasurer or treasurers of the said commissioners or trustees or other persons as aforesaid, or to such other person or persons as they from time to time shall or may direct or appoint.

Courts may be stopped up with the approbation of two or

79. And whereas there are in certain parochial or other districts within the jurisdiction of this Act certain courts, alleys, and places which, without inconvenience to the public, might be discontinued and stopped up, and which, from their private and confined situation, and by being harbours or receptacles for filth and rubbish, are

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more justices, and with the consent of the owners of contiguous property.

noisome and offensive; Be it therefore further enacted, that if upon the view of any two or more of his Majesty's justices of the peace for the city, borough, or county wherein such court, alley, or place may be situate, it shall to them appear that any such court, alley, or place is become unnecessary, and may, without inconvenience to the public, or to the owners of houses or tenements adjoining thereto, be discontinued and stopped up, then and in such case it shall and may be lawful to and for such justices, by and with the consent of the commissioners or trustees, or other persons having the control of the pavements of the streets and public places in such parochial or other district, testified by writing under the hand of the clerk or clerks to such commissioners or trustees, or other persons as aforesaid for the time being, and by and with the consent of the owner and owners of the houses, lands, or tenements adjoining to four parts in five in the length of any such court, alley, or place, testified by writing under his, her, or their hand or hands, at any special session to be holden for that purpose, by order under the hands and seals of such justices, to discontinue and stop up any and every such court, alley, or place; and all such courts, alleys, and places, or such proportion thereof as may adjoin to the houses or tenements of such person who shall have so consented, shall be discontinued and stopped up accordingly, subject to appeal as hereinafter is mentioned: Provided always, that nothing herein contained shall extend or be construed to extend so as to authorize the discontinuing or stopping up any court, alley, or place, or any part or parts thereof, whereby or in consequence whereof any house, tenement, or land shall be so inclosed (unless with such consent as aforesaid) that the owner or owners thereof shall be prevented from passing freely to and repassing freely from such house, tenement, or land.

Streets may be widened and improved with consent of owners.

80. And be it further enacted, that for the improvement of the streets and public places in the parochial or other districts within the jurisdiction of this Act, and for the public advantage, it shall and may be lawful to and for the commissioners or trustees, or other persons having the control of the pavements of any parochial or other district, from time to time, and at all times hereafter, to alter, widen, turn, or extend any of the streets or other public places within any such parochial or other district (except turnpike roads), and to lengthen and continue or open the same from the sides or ends of any streets or public places within any parochial or other district, into any other street or public place within such or any other parochial or other district, and to raise, level, lower, drain, ballast, gravel, or pave such new part or parts of any such streets or public places so altered, widened, extended, opened, or lengthened as aforesaid; and that if any houses, walls, buildings, lands, tenements, and hereditaments, or any part thereof, shall be adjudged by the said commissioners or trustees, or other persons as aforesaid, to project into, obstruct, or prevent them from so altering, turning, widening, extending, lengthening, continuing, or opening the said streets or public places within the said parochial or other district, and that the possession, occupation, and purchase of such houses, walls, buildings, lands, tenements, or hereditaments will be necessary for that purpose, it shall and may be lawful to and for the said commissioners or trustees, or other persons as aforesaid, and they shall have full power and authority to treat, contract, and agree, or to employ any person or persons to treat, contract, and agree with the several owner or owners, occupier or occupiers of all such houses, walls, buildings, lands, and hereditaments, of whatsoever nature, tenure, kind, or

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quality, for the purposes aforesaid, and to pay for the same such sum and sums of money as shall be agreed upon by the said commissioners or trustees, or other persons as aforesaid, and the owner or owners, occupier or occupiers thereof, out of the money to arise and be raised and to be received by them, either by virtue of any local Act or Acts of parliament relating to such parochial or other districts, or of this Act, and to pull down, use, sell, or dispose of such houses, walls, and buildings, and the materials thereof, and lay the sites thereof, and also such other lands, tenements, or hereditaments, or so much thereof as they the said commissioners or trustees, or other persons as aforesaid, shall think proper, into the said streets, or other public places; and all such new parts of such streets or public places, and the owners and occupiers of houses and buildings, messuages, and other hereditaments therein and adjoining thereto, shall be subject and liable to all the rates, assessments, powers, provisions, orders, clauses, and things to be made by virtue of or contained in any local Act or Acts of parliament relating to such parochial or other district, or by virtue of or contained in this Act in the same manner as the present streets and public places included in any such local Act or Acts, or within the jurisdiction of this Act, and the owners and occupiers of houses or buildings, and messuages or other hereditaments therein and adjoining thereto.

Corporate or collegiate bodies and incapacitated persons enabled to sell.

81. And be it further enacted, that it shall and may be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, or others having a partial or qualified interest or estate in any houses, lands, tenements, or hereditaments, husbands, femes covert, guardians, trustees, and feoffes in trust for charities or other purposes, committees, executors, or administrators, and all other persons whomsoever, not only on behalf of themselves, and their respective heirs, executors, administrators, and successors, but also on behalf of all persons entitled in reversion or remainder expectant on an estate tail, and on behalf of all persons entitled in reversion or remainder expectant on an estate for life, or other less estate, or by way of executory devise, in case such persons shall be incapacitated or decline to treat, and on behalf of their respective wives and cestuique trusts, whether infants, issue unborn, lunatics, idiots, femes covert or others, and for all and every other person or persons whomsoever who are and shall be seised, possessed of, or interested in any such houses, lands, tenements, or hereditaments, to treat and agree with the said commissioners or trustees, or other persons having the control of the pavements in the streets or public places in any parochial or other district within the jurisdiction of this Act as aforesaid, for the absolute sale thereof, and to sell and convey to the said commissioners or trustees, or other persons as aforesaid, by feoffment, lease and release, or bargain and sale, by deed indented and enrolled in any of His Majesty's courts of record at Westminster, for such valuable consideration as shall be *bonâ fide* agreed upon for such houses, lands, tenements, or hereditaments as shall be adjudged necessary and convenient for the purposes aforesaid; and that all contracts, agreements, sales, or conveyances which shall be *bonâ fide* made for the purposes aforesaid, shall be good and effectual in the law to all intents and purposes; anything to the contrary thereof in anywise notwithstanding.

When parties refuse or are un-

82. And be it further enacted, that if any body or bodies politic, corporate, or collegiate, or any other person or persons seised or possessed of or interested in any such houses, buildings, lands, tenements,

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able to treat, &c., a precept to be issued for impannelling a jury

or hereditaments as aforesaid, shall refuse to treat or agree, or shall not agree, or by reason of absence or disability cannot agree with the said commissioners or trustees or other persons having the control of the pavements of any streets or public places in any parochial or other district within the jurisdiction of this Act, or with any person or persons authorized by them, for the sale and conveyance of their respective estates and interest therein, or cannot be found or known, or shall not produce and evince a clear title to the premises they are in possession of, or to the interest they claim therein, to the satisfaction of the said commissioners or trustees or other persons as aforesaid, or of the person or persons so authorized by them, then and in every such case it shall be lawful for the said commissioners or trustees or other persons as aforesaid, and they are hereby required to issue a warrant or warrants, precept or precepts, directed to the sheriff or sheriffs, or bailiff or other proper officer of the city, borough, or county wherein the premises shall respectively lie or be, who is hereby authorized, directed, and required accordingly to impannel, summon, and return a competent number of substantial and disinterested persons qualified to serve on juries, not less than forty-eight nor more than seventy-two ; and out of such persons so to be impannelled, summoned, and returned, a jury of twelve men shall be drawn by some indifferent person to be by the said commissioners or trustees or other persons as aforesaid appointed, in such manner as juries for the trial of issues joined in His Majesty's courts at Westminster are by an Act made in the third year of the reign of His late Majesty King George the second, intituled "An Act for the better Regulation of Juries," are directed to be drawn ; which persons, so to be impannelled, summoned, and returned as aforesaid, are hereby required to come and appear before the justices of the peace for the city, borough, or county wherein the premises shall lie or be, at some court of general or quarter sessions of the peace to be holden in and for the same city, borough, or county, or at some adjournment thereof, as in such warrant or warrants, precept or precepts, shall be directed and appointed, and to attend such court of general or quarter sessions from day to day until discharged by the said court ; and all parties concerned shall and may have their lawful challenges against any of the said jurymen, but shall not be at liberty to challenge the array ; and the said justices are hereby authorized and empowered, by precept or precepts, from time to time as occasion shall require, to call before them all and every person and persons whomsoever who shall be thought proper and necessary to be examined as a witness or witnesses on his, her, or their oath or oaths, touching or concerning the premises ; and the said justices, if they think fit, shall and may, on the application of either party, likewise authorize the said jury to view the place or places or premises in question, in such manner as they shall direct ; and the said justices shall have power to adjourn such court from day to day as occasion shall require, and to command such jury, witnesses, and parties to attend until all such affairs for which they were summoned shall be concluded ; and the said jury upon their oaths (which oaths, as also the oaths of such person or persons as shall be called upon to give evidence, the said justices are hereby empowered and required to administer) shall inquire of the value of such houses, buildings,

who are to be drawn as 3 Geo. 2, c. 25, directs (*a*).

Jurymen may be challenged.

Justices, on the application of either party, may direct a view of the premises.

Jury to assess the value on oath.

(*a*) The law relating to juries is consolidated by 6 Geo. 4, c. 50, and amended by 25 & 26 Vict. c. 107 ; 33 & 34 Vict. c. 77, and 34 & 35 Vict. c. 2.

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lands, tenements, or hereditaments, and of the proportionable value of the respective estates and interest of all and every person and persons seised or possessed thereof, or interested therein, or of or in any part or parts thereof, and shall assess and award the sum or sums of money to be paid to such person or persons, party or parties respectively, for the purchase of such houses, buildings, lands, tenements, or hereditaments, and of such respective estates and interest therein, and also for goodwill, improvements, or any injury or damage whatsoever that may affect any such person or persons, party or parties, either as leaseholders or tenants at will, provided that such goodwill shall be estimated by what, in the opinion of such jury, the same would have been worth in case the improvements intended by this Act had not been in contemplation; and the said justices shall and may give judgment for such sum or sums of money so to be assessed: which verdict or verdicts, and the judgment and judgments, determination and determinations thereupon (notice in writing being given to the person or persons interested or claiming so to be, at least fourteen days before the time of the meeting of the said justices as aforesaid and jury, by leaving such notice at the dwelling house of such person and persons, or at his, her, or their last usual place or places of abode, or with some tenant or occupier of the premises respectively intended to be valued), shall be binding and conclusive to all intents and purposes whatsoever against all bodies politic, corporate, and collegiate, and all and every person and persons claiming any estate, right, title, trust, use, or interest, in, to, or out of such houses, buildings, lands, tenements, or hereditaments and premises in possession, reversion, remainder, or expectancy, as well infants and issue unborn, lunatics, idiots, and femes covert, and persons under any other legal incapacity or disability, as all other cestuique trusts, their, his, and her heirs, successors, executors, and administrators, and against all other persons whomsoever; and the said verdicts, judgments, and determinations, and all other proceedings of the said justices and juries, so to be made, given, and pronounced as aforesaid, shall be fairly written on parchment, and signed by the clerk of the peace for the time being of the city, borough, or county wherein the premises shall respectively lie or be; and in case it shall so happen that the sum or sums of money so to be assessed and awarded in consequence of such refusal to treat and agree as aforesaid, as the value of such houses, buildings, lands, tenements, or hereditaments, or as such proportional value as aforesaid, and as the recompense and satisfaction to be made for the injury or damage sustained as before mentioned respectively, shall not exceed the sum or sums of money which the said commissioners or trustees, or other persons as aforesaid, or any person or persons authorized by them, shall have previously offered to pay as and for such value, recompense, and satisfaction; then and in every such case all the reasonable costs, charges, and expenses of causing and procuring such value and recompense to be assessed and awarded as aforesaid, and also assessing and awarding the same, shall be borne and paid by the body or bodies politic, corporate, or collegiate, or other person or persons so seised or possessed of or interested in such houses, buildings, lands, tenements, or hereditaments, and so refusing to treat and agree as before mentioned respectively; and the said commissioners or trustees, or other persons as aforesaid, are hereby authorized and empowered to deduct and retain the said costs, charges, and expenses out of the sum or sums of money so to be assessed or awarded as aforesaid, or out of any part thereof: Provided always, that in all cases where any person or persons shall by reason of absence have been pre-

Verdict of the jury, &c., to be final, previous notice being given to the parties interested.

If the sum assessed shall not exceed the sum offered,

the costs of such assessment, &c., to be paid by such body politic, &c.,

and the commissioners, &c., may retain the same

vented from treating about such recompense or satisfaction as aforesaid, such costs and charges shall be borne and paid by the said commissioners or trustees, or other persons as aforesaid, in manner aforesaid.

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out of the sum so assessed.

Justices empowered to impose fines for non-attendance.

83. And be it further enacted, that the said justices shall have power from time to time to impose any reasonable fine, not exceeding the sum of £20, on such sheriff or bailiff, or his deputy or deputies, bailiffs or agents respectively, making default in the premises, and on any of the persons who shall be summoned and returned on any such jury or juries, and shall not appear, without sufficient excuse, or appearing shall refuse to be sworn on the said jury or juries, or being so sworn shall not give his or their verdict; and also on any person or persons who shall be summoned to give evidence touching any of the matters aforesaid, and shall not attend, or attending shall refuse to be sworn, or to affirm, or who shall refuse to give his, her, or their evidence, and on any person or persons who shall in any other manner wilfully neglect his, her, or their duty in the premises, contrary to the true intent and meaning of this Act; and from time to time to levy such fine or fines, by order of the said justices, by distress and sale of the offender's goods and chattels, together with the reasonable charges of every such distress and sale, returning the overplus (if any) to the owner or owners; and that a copy of the order of the said justices, signed by the clerk of the peace for the time being of the city, borough, or county wherein the premises shall lie or be, as the case shall require, shall respectively be sufficient authority to the person or persons therein to be appointed, and to every other person acting or aiding and assisting therein, to make such distress and sale; and all such fines shall be paid to the treasurer or treasurers of the commissioners or trustees, or other persons as aforesaid, having the control of the pavements in the parochial or other district wherein such premises shall lie or be, or to such other person or persons as they may respectively from time to time appoint.

Application of compensation where exceeding £200. (*a*)

84. And be it further enacted, that if any money shall be agreed or awarded to be paid for any lands, buildings, tenements or hereditaments, or for any other matter, right, or interest, of what nature or kind soever, purchased, taken, or used by virtue of the powers of this Act for the purpose thereof, which shall belong to any corporation, feme covert, infant, lunatic, or person or persons under any other disability or incapacity, such money shall, in case the same shall amount to the sum of £200, with all convenient speed be paid into the Bank of England, in the name and with the privity of the accountant general of the high court of chancery, to be placed to his account there *ex parte* the said commissioners or trustees, or other persons having the control of the pavements of the streets or public places in the parochial or other districts within the jurisdiction of this Act, wherein such lands, buildings, tenements, or hereditaments shall be or lie as aforesaid, together with the name or names of such person or persons as the said commissioners or trustees or other persons

(*a*) The court has jurisdiction under sections 84 & 85 of this Act, to order payment of the costs of an interim investment in lands (including the costs of a petition) of the purchase money of land taken by a district board of works under this Act: *Re Merceron*, L. R. 7 Ch. D. 184; *Re Saunders's Estate*, L. R. 8 Eq. 681, considered.

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as aforesaid, by writing signed by them, shall direct and appoint, to the intent that such money shall be applied, under the direction and with the approbation of the said court, to be signified by an order made upon a petition to be preferred in a summary way by the person or persons who would have been entitled to the rents and profits of the said lands, buildings, tenements, or hereditaments, in the purchase of land tax, or discharge of any debt or debts, or such other incumbrance or part thereof as the said court shall authorize to be paid, affecting the same lands, buildings, tenements, or hereditaments, or affecting other lands, buildings, tenements, or hereditaments standing settled therewith to the same or the like uses, intents, or purposes; or where such money shall not be applied, then the same shall be laid out and invested, under the like direction and approbation of the said court, in the purchase of other messuages, lands, buildings, tenements, or hereditaments, which shall be conveyed and settled to, for, and upon such and the like uses, trusts, intents, and purposes, and in the same manner, as the messuages, lands, buildings, tenements, and hereditaments which shall be so purchased, taken, or used as aforesaid, stood settled or limited, or such of them as at the time of making such conveyance and settlement shall be existing undetermined and capable of taking effect; and in the meantime and until such purchase shall be made, the said money shall, by order of the court of chancery, upon application thereto, be invested by the said accountant-general, in his name, in the purchase of £3 per centum Consolidated or £3 per centum Reduced Bank Annuities; and in the meantime and until the said bank annuities shall be ordered by the said court to be sold for the purposes aforesaid, the dividends and annual produce of the said consolidated or reduced bank annuities shall from time to time be paid, by order of the said court, to the person or persons who would for the time being have been entitled to the rents and profits of the said lands, buildings, tenements, and hereditaments so hereby directed to be purchased, in case such purchase or settlement were made.

Application where the compensation does not exceed £200. nor less than £20.

85. Provided always, and be it further enacted, that if any money so agreed or awarded to be paid for any lands, buildings, tenements, or hereditaments, or for any other matter, right, or interest, of what nature or kind soever, purchased, taken, or used for the purposes aforesaid, and belonging to any corporation, or to any person or persons under disability or incapacity as aforesaid, shall be less than the sum of £200, and shall exceed the sum of £20, then and in all such cases the same shall, at the option of the person or persons for the time being entitled to the rents and profits of the hereditaments so purchased, taken, or used, or of his, her, or their guardian or guardians, committee or committees, in case of infancy or lunacy, to be signified in writing under their respective hands, be paid into the bank in the name and with the privity of the said accountant-general of the high court of chancery, and be placed to his account as aforesaid, in order to be applied in manner hereinbefore directed; or otherwise the same shall be paid, at the like option, to two trustees, to be nominated by the person or persons making such option, and approved of by the said commissioners or trustees or other persons as aforesaid (such nomination and appropriation to be signified in writing under the hands of the nominating and approving parties), in order that such principal money, and the dividends arising thereon, may be applied in any manner hereinbefore directed, so far as the case may be applicable, without obtaining or being required to obtain the direction or approbation of the court of chancery.

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Application where the money is less than £20.

86. Provided also, and be it further enacted, that where such money so agreed or awarded to be paid as next before mentioned shall be less than £20, then and in all such cases the same shall be applied to the use of the person or persons who would for the time being have been entitled to the rents and profits of the hereditaments and premises so purchased, taken, or used for the purposes of this Act, in such manner as the said commissioners or trustees, or other persons as aforesaid, shall think fit; or in case of infancy or lunacy, then to his, her, or their guardian or guardians, committee or committees, to and for the use and benefit of such person or persons so entitled respectively.

On payment of the purchase money premises to vest in commissioners, &c.

87. And be it further enacted, that upon payment of any sum or sums so agreed or awarded to the party or parties to whom the same shall be so awarded, or upon the deposit of the same in the Bank of England in manner by this Act directed (as the case may be), the said lands, tenements, and hereditaments, in respect whereof the same shall have been so paid or deposited as aforesaid, shall vest in the commissioners or trustees, or other persons as aforesaid for the time being, in manner and for the purposes aforesaid, who shall be deemed in law to be in the actual possession thereof to all intents and purposes whatsoever, freed and discharged from all former and other estates, rights, titles, interests, claims, and demands whatsoever.

Where any question shall arise touching the title to money to be paid, the person who shall be in possession of the lands, &c. at the time of such purchase, shall be deemed entitled thereto, according to such possession, unless, &c.

88. Provided always, and be it further enacted, that where any question shall arise touching the title of any person to any money to be paid into the Bank of England in the name and with the privity of the accountant-general of the court of chancery, in pursuance of this Act, for the purchase of any lands, tenements, or hereditaments, or of any estate, right, or interest in any lands, tenements, or hereditaments to be purchased in pursuance of this Act, or to any bank annuities to be purchased with any such money, or the dividends or interest of any such bank annuities, the person or persons who shall have been in possession of such lands, tenements, or hereditaments at the time of such purchase, and all persons claiming under such person or persons, or under the possession of such person or persons, shall be deemed and taken to have been lawfully entitled to such lands, tenements, or hereditaments, according to such possession, until the contrary shall be shown to the satisfaction of the said court of chancery; and the dividends or interest of the bank annuities to be purchased with such money, and also the capital of such bank annuities, shall be paid, applied, and disposed of accordingly, unless it shall be made appear to the said court that such possession was a wrongful possession, and that some other person or persons was or were lawfully entitled to such lands, tenements, or hereditaments, or to some estate or interest therein.

The court of chancery may order reasonable expenses of purchase to be paid by the commissioners, &c. (*a*).

89. Provided also, and be it further enacted, that where by reason of any disability or incapacity of the person or persons or corporation

(*a*) See the case of *Re Merceron*, L. R. 7 Ch. D. 184, referred to in note to section 84, *ante*. The court of chancery has jurisdiction under this enactment to order payment of the costs of a petition for payment out of court, and to separate accounts of the purchase money of houses taken by a vestry under the provisions of this Act for the purpose of widening a street; *In re Saunders' Estate*, L. R. 8 Eq. 681.

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entitled to any lands, tenements, or hereditaments to be purchased, or purchased under the authority of this Act, the purchase money for the same shall be required to be paid into the court of Chancery, and to be applied in the purchase of other lands, tenements, or hereditaments, to be settled to the like uses in pursuance of this Act, it shall be lawful for the said court of chancery to order the expenses of all purchases from time to time to be made in pursuance of this Act, or so much of such expenses as the said court shall deem reasonable, to be paid by the said commissioners or trustees or other persons as aforesaid, who shall from time to time pay such sums of money for such purposes as the said court shall direct.

Tenants at will, &c., to deliver possession on six months' notice.

90. And be it further enacted, that every tenant at will or lessee for a year, or any other person or persons in possession of any such houses, buildings, lands, tenements, and hereditaments, or any part thereof, which shall be purchased by virtue and for the purposes of this Act, and who shall have no greater interest in the premises than as tenant at will or lessee for a year, or from year to year, shall deliver up the possession of such premises to the said commissioners or trustees, or other persons as aforesaid having the control of the pavements in the streets or public places in the parochial or other division within the jurisdiction of this Act, wherein such houses, buildings, lands, tenements and hereditaments, or to such person or persons as the said commissioners or trustees or other persons as aforesaid shall appoint to take possession of the same, upon having six calendar months' notice to quit such possession from the said commissioners or trustees or other persons as aforesaid, or from the person or persons so authorized by them; and such person or persons in possession shall at the end of the said six calendar months, whether such notice be given with reference to the time or times of such tenants holding or not, or so soon as he, she, or they shall be required, peaceably and quietly deliver up the possession of the said premises to the said commissioners or trustees, or other persons as aforesaid, or the person or persons authorized by the said commissioners or trustees or other persons as aforesaid to take possession thereof; and in case any such tenant should be compelled to quit before the expiration of his or her term in any such premises, then and in such case the said commissioners or trustees, or other persons as aforesaid, shall and they are hereby required to make satisfaction and compensation for the loss or damage which he or she shall or may sustain thereby; and in case any difference or dispute shall arise as to the amount of such satisfaction or compensation, the same shall or may be determined, settled, and ascertained by a jury, in such and the like manner as the sum or sums of money to be paid for the purchase of any lands, tenements, or hereditaments, is herein directed to be determined, settled, and ascertained; and that in case any such person or persons so in possession as aforesaid shall refuse to give such possession as aforesaid, it shall and may be lawful to and for the said commissioners or trustees, or other persons as aforesaid, to issue their precept or precepts to the sheriff or sheriffs, or bailiff, or other proper officer of the city, borough, or county wherein such parochial or other district shall be situate, to deliver possession of the said premises to such person or persons as shall in such precept or precepts be nominated to receive the same; and the said sheriff or sheriffs or bailiff, and every other proper officer, is hereby authorized and required to deliver such possession accordingly of the said premises, and to levy such costs as shall accrue from the issuing and execution

of such precept or precepts on the person or persons so refusing to give possession as aforesaid, by distress and sale of his, her, or their goods. Section 90.

Mortgagees, on tender of principal and interest, to convey;

91. And be it further enacted, that all and every person and persons who shall have any mortgage or mortgages on such houses, buildings, lands, tenements and hereditaments, not being in possession thereof by virtue of such mortgage or mortgages, shall on the tender of the principal money and interest due thereon, together with the amount of six calendar months' interest on the said principal, by the said commissioners or trustees, or other persons having the control of the pavements in the streets or public places in such parochial or other district, within the jurisdiction of this Act, wherein the said houses, buildings, lands, tenements, and hereditaments shall lie or be as aforesaid, or by such person or persons as they shall appoint, immediately convey, assign, and transfer such mortgage or mortgages to the said commissioners or trustees or other persons as aforesaid, or to such person or persons as they shall appoint; or in case such mortgagee or mortgagees shall have notice in writing from the said commissioners or trustees or other persons as aforesaid, or from such person or persons as they shall appoint, that they will pay off and discharge the principal money and interest which shall be due on the said mortgage or mortgages at the end or expiration of six calendar months, to be computed from the day of giving such notice, that then at the end of the said six calendar months, on payment of the principal and interest so due, such mortgagee or mortgagees shall convey, assign, and transfer his, her, or their interest in the premises to the said commissioners or trustees or other persons as aforesaid, or to such person or persons as shall be appointed in trust for them; and in case the mortgagee or mortgagees shall refuse to convey and assign as aforesaid on such tender or payment, that then all interest on every such mortgage shall from thenceforth cease and determine.

on refusal, interest to cease.

The mortgagees not to be paid more than the real value of premises.

92. Provided always, and be it further enacted, that in case the sum due upon any such mortgage or mortgages, with all interest due thereon, shall amount to more than the real value of the premises, to be ascertained as directed by this Act, then the said commissioners or trustees or other persons as aforesaid shall not be liable to pay to the mortgagee or mortgagees more than such real value of such premises, so ascertained as aforesaid.

Bargains and sales to have the force of fines and recoveries.

93. And be it further enacted, that the conveyance of any such estate or interest of any feme covert to the said commissioners or trustees or other persons as aforesaid for the time being, or any five or more of them, or any person or persons in trust for them, by indenture or indentures of bargain and sale, sealed and delivered by such feme covert, in the presence of and attested by two credible witnesses, and duly acknowledged, and to be enrolled in the high court of chancery within six calendar months after the making thereof, shall as effectually and absolutely convey the estate and interest of such feme, covert in the premises as any fine or fines, recovery or recoveries, would or could do, if levied or suffered thereof in due form of law; and further, that all bargains and sales whatsoever to be made of any such houses, buildings, lands, tenements, and hereditaments, as shall be purchased by the commissioners or trustees or other persons as aforesaid for the time being, by virtue and for the purposes of this Act, and enrolled

Section 93. as aforesaid, shall have the like force, effect, and operation in law, to all intents and purposes, as any fine or fines, recovery or recoveries whatsoever would have had if levied or suffered by the bargainer or bargainers, or any person or persons seised of or entitled to any estate or interest in the premises in trust for such bargainer or bargainers, in any manner or form whatsoever.

Upon payment of principal and interest into the bank, premises to vest in the commissioners, &c.

94. And be it further enacted, that upon payment of the principal money and interest due on any mortgage as aforesaid into the Bank of England, at the end of six calendar months from the day of giving such notice as aforesaid, for the use of the mortgagee or mortgagees, the cashier or cashiers of the bank shall give a receipt or receipts for the said money, in like manner as is hereinbefore directed in cases of other payments into the bank; and thereupon all the estate, right, title, interest, use, trust, property, claim and demand of the said mortgagee or mortgagees, and of all and every person or persons in trust for him, her, or them, shall vest in the said commissioners or trustees or other persons as aforesaid, and they shall be deemed to be in the actual possession of the premises comprised in such mortgage or mortgages, to all intents and purposes whatsoever.

Monies to be paid or tendered before any use made of the premises.

95. And be it further enacted, that all sums of money, or other consideration, recompense, or satisfaction, to be paid or made pursuant to any such agreement or verdict as aforesaid, or in discharge of any such mortgage, shall be paid or tendered to the party or parties entitled to the same, or paid into the Bank of England as aforesaid, before the said commissioners or trustees or other persons as aforesaid, or any person or persons authorized by them, shall proceed to pull down any house or houses, or other erections or buildings comprised in or affected by such agreement, verdict, or mortgage respectively, or to use the ground for any of the purposes before mentioned in this Act.

Estates may be sold, the persons of whom they were bought having the first offer.

96. And be it further enacted, that it shall and may be lawful to and for the said commissioners or trustees or other persons as aforesaid, from time to time absolutely to sell and dispose of all or any of the freehold or leasehold estates, lands, houses, hereditaments, and premises which shall hereafter be conveyed to them in pursuance of this Act or otherwise; provided that the said freehold or leasehold estates, lands, houses, hereditaments, and premises so purchased are first offered for sale to the respective person or persons of or from whom the premises respectively were purchased by or on behalf of the said commissioners or trustees or other persons as aforesaid; and if such person or persons respectively shall not then and thereupon agree (except with respect to and on account of the price thereof as hereinafter mentioned), or shall refuse (except with respect to and on account of the price thereof) to purchase the same respectively an affidavit shall be made and sworn before a master in the high court of chancery, or before one of His Majesty's justices of the peace for the city, borough, or county wherein such parochial or other district shall be situate (who are hereby respectively empowered and directed to take the same), by some person or persons uninterested in the said freehold or leasehold estates, lands, houses, hereditaments, or premises, stating that such offer was made by or on the behalf of the said commissioners or trustees or other persons as aforesaid, and that such offer was not then and thereupon agreed to, or was refused by the person or persons to whom the same

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was so offered ; and that any such affidavit shall in all courts whatsoever be sufficient evidence and proof that such offer was made, and was not agreed to, or was refused by the person or persons to whom such offer was made, as the case may be ; and in case such person or persons shall be desirous of repurchasing the same, and he, she, or they, and the said commissioners, or trustees, or other persons as aforesaid, shall differ and not agree with respect to the price thereof, then the price or prices thereof shall be ascertained by a jury, in the manner hereinbefore directed with respect to the disputed value of premises to be purchased by the said commissioners or trustees or other persons as aforesaid in pursuance of this Act ; and the expense of hearing and determining such differences shall be borne and paid in like manner as is hereinbefore directed with respect to such purchase made by the said commissioners or trustees or other persons as aforesaid (*mutatis mutandis*) ; and the money to arise by the sale or sales which may be made by the said commissioners or trustees or other persons as aforesaid, of such freehold or leasehold estates, lands, houses, hereditaments, and premises, shall be applied by the said commissioners or trustees or other persons as aforesaid to the purposes of the local Act or Acts of parliament relating to the parochial or other division over the pavement whereof they shall possess a control, or to the purposes of this Act, but the purchaser or purchasers thereof shall not be answerable or accountable for any misapplication or nonapplication of the money paid by him or them for such freehold or leasehold estates, lands, houses, hereditaments, and premises.

Commissioners may meet and may have offices and places where strays or goods may be impounded.

109. And be it further enacted, that it shall and may be lawful to and for the commissioners or trustees, or other persons having the control of the pavements in the streets or public places in any parochial or other district within the jurisdiction of this Act, from time to time and at all times afterwards to assemble and meet together for the execution of the local Act or Acts of parliament whereby or by virtue whereof they may have been appointed, and of this Act, within their respective parochial or other district or elsewhere, and may adjourn such meetings from time to time as they shall think proper ; but that one such general meeting shall be held at least once in every calendar month, and that five or more of such commissioners or trustees or other persons shall attend at and be necessary to constitute every such general meeting ; and the acts, resolutions, and proceedings of the majority present at such meetings shall be deemed and considered to be the acts, resolutions, and proceedings of such meetings ; and that such commissioners or trustees or other persons as aforesaid may retain and employ and discharge and pay such clerks, surveyors, inspectors, and other persons, as they from time to time shall deem expedient ; and also shall and may deduct and allow to themselves and to each other, and to their officers and servants, all expenses necessarily incurred in and about the execution of any local Act or Acts of parliament, or of this Act ; and also shall and may from time to time purchase or rent upon lease, for a term or terms of years or otherwise, or may erect, furnish, alter or improve any houses, offices, and other places which they may deem necessary or expedient for their places of meeting, or for the transaction of their official business, or for the deposit and safe custody of their books, vouchers, and documents ; and also may purchase or rent upon lease or otherwise from time to time such place or places to be called "The Green Yard" for such parochial or other district, for the reception, deposit, and safe custody of any

Section 109.

article seized and removed by virtue of any local Act or Acts of parliament, or of this Act, within their respective parochial or other districts, or of any horses, beasts, cattle, or any animals or other things which may be found straying, or which shall be in or about any streets or public places within their respective parochial or other district, or which, according to any local Act or Acts of parliament or to this Act, or to the common or statute law, may be impounded; and may appoint any person or persons to inhabit and take care of such houses, offices, and other places of meeting, and to have the custody and care of such books, vouchers, and documents, and to take care of and superintend such places of deposit as aforesaid; and may appoint the fees and charges which shall be paid and payable, and which may be demanded on or for the deposit and safe custody of any such articles so seized, or of any horses, beasts, cattle, animals, or other things which shall be there impounded as aforesaid; and that the same fees and charges shall be so paid before any such articles or things shall be given up or restored to any persons whomsoever, or shall and may be deducted out of the proceeds of any appraisement or sale of any such articles and things, and which may be effected thereof under and by virtue of any local Act or Acts of parliament, or of this Act.

Commissioners and surveyors not to be obstructed in performance of their duty.

122. And be it further enacted, that if any person or persons shall at any time or times hereafter in any manner whatsoever wilfully obstruct, hinder, or molest any commissioners or trustees or any other persons having the control of the pavements in any streets or public places in any parochial or other district within the jurisdiction of this Act, or any surveyor or surveyors of pavements, or any other officer officers, person or persons whomsoever, who are or shall be appointed or employed to put in execution this Act or any local Act or Acts of parliament by the said commissioners or trustees or other persons having the control of the pavements of the streets and public places in any such parochial or other district within the jurisdiction of this Act, in the performance or execution of his or their duty, then every person or persons so offending shall for the first offence forfeit the sum of £5, and for the second offence the sum of £10, and for the third or any subsequent offence the sum of £20, to be recovered in the same manner in which other penalties are hereinafter directed to be recovered by virtue of this Act.

Justices may proceed on complaint of commissioners.

123. And be it further enacted, that in all cases where one or more justice or justices of the peace is or are or may be empowered by law to proceed on the complaint of the commissioners or trustees, or other persons having the control of the pavements in any streets or public places in any parochial or other district within the jurisdiction of this Act, or any of them, it shall and may be lawful for such justice or justices of the peace, and he or they is and are hereby required to proceed on the complaint of any one of the said commissioners or trustees or other such persons, or of their surveyor or surveyors of the pavements, or of their clerk or clerks for the time being, or any of them, or of any person or persons whom they or any two or more of them by writing under their hands shall appoint for that purpose, in such and the like manner to all intents and purposes as if such complaint had been made by such commissioners or trustees or other such persons as aforesaid, or any or all of them.

Local Paving Acts of parlia-

138. Provided also, and be it enacted, that neither any Act or Acts of parliament relating either exclusively to the paving or repairing

Section 138. ment not hereby repealed.

the pavements of the streets or public places in any parochial or other district within the jurisdiction of this Act, or relating thereto jointly with any other object or purpose, nor any clause, matter, or provision therein contained, shall be hereby repealed; but that the commissioners, trustees, or other persons by any such local Act or Acts of parliament vested with the control or superintendence of the pavement of the streets and public places in every such parochial or other district shall retain and may exercise all and every the powers and authorities by all and every such local Act and Acts of parliament conferred upon them or any of them; and that they may from time to time and at all times, either act under and upon all or any of the provisions, clauses, powers, and authorities of such Act or Acts of parliament, or under any of the provisions, clauses, powers, and authorities of this Act, as they from time to time, upon each emergency or each particular occasion, may think proper and deem most expedient; but subject nevertheless to all the provisions contained in this Act as to the appointment of surveyors of the pavement in every parochial or other district, and as to the means hereby provided for compelling the speedy and effectual reparation of imperfect pavement in all streets and public places within the jurisdiction of this Act, and the regulation and improvement of such streets, and removal and prevention of nuisances and obstructions, according to the provisions of this Act.

Not to authorize the making any thoroughfare without consent of the owner of the estate.

142. Provided always, and be it further enacted, that nothing in this Act contained shall extend or be construed to extend to authorize the taking down or removing any bar, gate, rail, or other fence fixed for preventing any thoroughfare into or from any square, street, or way, without the consent of the owner of the estate or property upon which such bars, gates, rails, or other fences, squares, streets, or ways shall be situate.

Certain provisions in the Act of 56 Geo. 3, c. 128, not to be affected by this Act (*a*).

144. And whereas by an Act passed in the fifty-sixth year of the reign of His present Majesty, intituled "An Act to amend two Acts made in the fifty-third year of the Reign of His present Majesty, for opening a more convenient Communication from Marylebone Park to Charing Cross and for paving the Streets to be made in Marylebone Park; and to enable His Majesty to grant small Portions of Land as Sites for public Buildings, or to be used as Cemeteries within the Bills of Mortality;" it was enacted, that it should be lawful for the commissioners for executing that Act to authorize and permit the building or erecting and making of any porticoes, arcades, and other covered ways projecting from any buildings or houses which should or might be built on the sides of the new streets, squares, circusses, ways, courts, passages, or places comprised within the provisions of the said Act, extending over any footways of the said streets, squares, circusses, ways, courts, passages, or places under the restrictions therein mentioned; and to permit the erecting or making, or continuing or suffering to remain the fronts of any houses or buildings in the said streets, squares, circusses, ways, courts, passages, and places, in such manner as that some fronts might recede behind or advance before others, and with bow windows or other projections, and with virandas, alcoves, balconies, pilasters, columns, and shop windows, or other projections under the restrictions therein mentioned: Now therefore be it enacted, that nothing in this Act contained shall extend or be construed to extend to alter, abridge,

(*a*) See Crown Estate Paving Act, 1851, 14 & 15 Vict. c. 95.

Section 144.

repeal, or affect any of the said provisions in the said recited Act of the fifty-sixth year of the reign of His present Majesty contained, or to authorize or empower any surveyor of pavements or other person or persons, to remove or alter, or to require the removal or alteration of any porticoes, arcades, or other covered ways, bow windows, virandas, alcoves, balconies, pilaster columns, architectural ornaments, or other projections which have been heretofore or shall be hereafter authorized or permitted, by the commissioners for the time being for executing the said recited Act, to be made in or to any houses or other erections, which shall have been or shall or may be erected or built in any of the streets, squares, circusses, ways, courts, passages, or places comprised within the provisions of the said recited Act of the fifty-sixth year of the reign of his present Majesty.

Houses, &c., within the parish of Saint Marylebone, in the line of the new street, or in Marylebone Park, to be rated at a specific sum.

145. And whereas by the said last-mentioned Act it was enacted, that such of the houses, buildings, lands, and hereditaments, which were intended to be taken and used under the provisions and for the purposes of the first Act therein recited, as are situate in the parish of Saint Marylebone, and also the houses and buildings to be erected on the said lands, should for ever thereafter, in making any rates or assessments for the paving, repairing, watching, lighting, and cleansing the several streets and other places in the said parish of Saint Marylebone, be charged and assessed thereto, as being altogether and in the whole of the yearly rent or value of six thousand and eighty-four pounds, and no more; and that the same should for ever thereafter be charged and assessed and rated at the said yearly rent of six thousand and eighty-four pounds, whether the rents or values of the same should be more or less; be it therefore further enacted, that nothing herein contained shall be construed or extend to alter, repeal, or annul the provisions contained in the said recited Act of the fifty-sixth year of the reign of His present Majesty, with relation thereto; but that all such houses, buildings, lands, and hereditaments comprised within the provisions of the said recited Act of the fifty-sixth year of His present Majesty's reign, as are situate within the said parish of Saint Marylebone, shall for all the purposes of this Act be charged and assessed as being altogether and in the whole of the said yearly rent or value of six thousand and eighty-four pounds, and no more; and that the said sum of six thousand and eighty-four pounds shall at all times hereafter, and for all the purposes of this Act, be deemed and taken to be the annual rent or value of all such houses, buildings, lands, and hereditaments; anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

Provisions of the Act not to affect turnpike roads.

147. Provided also, and be it further enacted, that neither this Act, nor any enactment, clause, provision, matter, or thing herein contained shall extend or be construed to extend to any turnpike road or turnpike roads, or to any part of any turnpike road or turnpike roads, whether the same shall be paved or unpaved, now being in any parochial or other district within the jurisdiction of this Act, but that the same shall be completely and entirely exempted therefrom; anything herein contained to the contrary thereof in anywise notwithstanding.

Public Act.

148. And be it further enacted, that this Act shall be deemed and taken to be a public Act, and shall be judiciousiy taken notice of as such by all judges, justices, and others, without being specially pleaded.

SUPPLEMENT.

ACTS PASSED IN THE LAST SESSION OF PARLIAMENT.

AN ACT

TO CONTINUE AND AMEND THE PETROLEUM ACT, 1871.

42 & 43 VICT. CAP. 47.

11TH AUGUST, 1879.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :—

Short title and construction of Act. 34 & 35 Vict. c. 105.

1. This Act may be cited as the Petroleum Act, 1879.

This Act shall be construed as one with the Petroleum Act, 1871, and together with that Act may be cited as the Petroleum Acts, 1871 and 1879.

Alteration of test. 34 & 35 Vict. c. 105.

2. Whereas by the Petroleum Act, 1871, it is enacted that the term "petroleum to which this Act applies" means such of the petroleum defined by that Act as, when tested in manner set forth in Schedule One to that Act, gives off an inflammable vapour at a temperature of less than one hundred degrees of Fahrenheit's thermometer, and it is expedient to alter the said test : Be it therefore enacted that—

34 & 35 Vict. c. 105.

In the Petroleum Act, 1871, the term "petroleum to which this Act applies" shall mean such of the petroleum defined by section 3 of that Act as, when tested in manner set forth in Schedule One to this Act, gives off an inflammable vapour at a temperature of less than seventy-three degrees of Fahrenheit's thermometer.

Section 2.

34 & 35 Vict. c. 105.

Every reference in the Petroleum Act, 1871, to Schedule One to that Act shall be construed to refer to Schedule One to this Act.

Verification of test apparatus.

3. A model of the apparatus for testing petroleum, as described in Schedule One to this Act, shall be deposited with the board of trade and the board of trade shall, on payment of such fee, not exceeding five shillings, as they from time to time prescribe, cause to be compared with such model and verified every apparatus constructed in accordance with Schedule One to this Act which is submitted to them for the purpose, and if the same is found correct shall stamp the same with a mark approved of by the board and notified in the London Gazette.

An apparatus for testing petroleum purporting to be stamped with the said mark shall until the contrary is proved, be deemed to have been verified by the board of trade.

All fees under this section shall be paid into the exchequer.

Continuance of 34 & 35 Vict. c. 105.

4. The Petroleum Act, 1871, shall continue in force until otherwise directed by parliament.

Commencement of Act.

5. This Act shall come into operation on the thirty-first day of December one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act.

Repeal of part of 34 & 35 Vict. c. 105.

6. The Petroleum Act, 1871, shall be repealed after the commencement of this Act to the extent in the third column of the second schedule to this Act mentioned.

34 & 35 Vict. c. 105.

Provided that any sample of petroleum taken before the commencement of this Act shall be tested in manner set forth in Schedule One to the Petroleum Act, 1871, and any offence committed before the commencement of this Act shall be prosecuted, and any investigation, legal proceeding, or remedy in relation to such offence, or to any act done before the commencement of this Act, shall be instituted, carried on, and have effect as if the provisions of this Act, other than those continuing the Petroleum Act, 1871, had not been passed

34 & 35 Vict. c. 105.

FIRST SCHEDULE.

MODE OF TESTING PETROLEUM SO AS TO ASCERTAIN THE TEMPERATURE AT WHICH IT WILL GIVE OFF INFLAMMABLE VAPOUR.

Specification of the Test Apparatus.

The following is a description of the details of the apparatus :—

The oil cup consists of a cylindrical vessel 2″ diameter, $2\frac{2}{10}$″ height (internal), with outward projecting rim $\frac{5}{10}$″ wide, $\frac{3}{8}$ from the top, and $1\frac{7}{8}$″ from the bottom of the cup. It is made of gun metal or brass (17 B. W. G.) tinned inside. A bracket, consisting of a short stout piece of wire bent upwards and terminating in a point, is fixed to the inside of the cup to serve as a gauge. The distance of the point from the bottom of the cup is $1\frac{1}{2}$″. The cup is provided

Schedule 1.

with a close-fitting overlapping cover made of brass (22 B.W.G.), which carries the thermometer and test-lamp. The latter is suspended from two supports from the side by means of trunnions upon which it may be made to oscillate, it is provided with a spout, the mouth of which is one-sixteenth of an inch in diameter. The socket which is to hold the thermometer is fixed at such an angle and its length is so adjusted that the bulb of the thermometer when inserted to its full depth shall be $1\frac{1}{2}''$ below the centre of the lid.

The cover is provided with three square holes, one in the centre, $\frac{5}{10}''$ by $\frac{4}{10}''$, and two smaller ones, $\frac{3}{10}''$ by $\frac{2}{10}''$, close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of and in line with the mouth of the lamp, is fixed a white bead, the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B.W.G.), an inner one of $3''$ diameter and $2\frac{1}{2}''$ height, and an outer one of $5\frac{1}{2}''$ diameter and $5\frac{3}{4}''$ height; they are soldered to a circular copper plate (20 B.W.G.) perforated in the centre, which forms the top of the bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}''$; that is, its diameter is about $\frac{6}{8}''$ greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened, by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite, to avoid metallic contact between the bath and the oil cup. The exact distance between the sides and bottom of the bath and of the oil lamp is one-half of an inch. A split socket similar to that on the cover of the oil cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B.W.G.) flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is $6\frac{1}{4}''$. One of the three legs of the stand serves as support for the spirit lamp attached to it by means of a small swing bracket. The distance of the wick holder from the bottom of the bath is $1''$.

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way. It is fitted with a metal collar, fitting the socket, and the part of the tube below the scale should have a length of about $3\frac{1}{4}''$ measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil

Schedule 1.

is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F. ; it measures from end of ivory back to bulb $2\frac{1}{4}''$.

NOTE.—A model apparatus is deposited at the weights and measures department of the board of trade.

Directions for applying the Flashing Test.

1. The test apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication, or by heating the water with the spirit lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test lamp is prepared for use by fitting it with a piece of flat plaited candle wick, and filling it with colza or rape oil up to the lower edge of the opening of the spout or wick tube. The lamp is trimmed so that when lighted it gives a flame of about 0·15 of an inch diameter, and this size of flame which is represented by the projecting white bead on the cover of the oil cup is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil lamp, and for this purpose a test-flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and if it exceeds 65° the samples to be tested should be cooled down (to about 60°) by immersing the bottles containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is placed into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test lamp is then placed in a position upon the lid of the cup, the lead line or pendulum, which has been fixed in a convenient position in front of the operator is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66° the operation of testing is to be com-

menced, the test flame being applied once for every rise of one degree, in the following manner :—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

Note.—If it is desired to employ the test apparatus to determine the flashing points of oil of very low volatility, the mode of proceeding is to be modified as follows :—

The air-chamber which surrounds the cup is filled with cold water, to a depth of 1½ inches, and the heating vessel or water bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120°, instead of with cold water.

SECOND SCHEDULE.

Act Repealed.

Year and Chapter.	Title.	Extent of Repeal.
34 & 35 Vict. c. 105	The Petroleum Act, 1871.	Section three, from "and the term petroleum to which this Act applies" inclusive to the end of the section. Section eighteen.

AN ACT

TO EXTEND THE POWERS OF THE ARTIZANS DWELLINGS ACT OF 1868, BY PROVISIONS FOR COMPENSATION AND REBUILDING.

42 & 43 VICT. CAP. 64.

15TH AUGUST, 1879.

31 & 32 Vict. c. 130.

WHEREAS it is expedient to extend and amend the provisions of the Artizans and Labourers Dwellings Act, 1868:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in the present parliament assembled, and by the authority of the same as follows:

Short title, and construction of Act. 31 & 32 Vict. c. 130.

1. This Act may be cited as the Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879, and shall, so far as is consistent with the tenor thereof, be construed together with the Artizans and Labourers Dwellings Act, 1868 (hereinafter referred to as "the Act of 1868"), as one Act.

Application of Act, and definition of "local authority," "local rate," and "clerk of local authority." 31 & 32 Vict. c. 130.

2. The Act shall apply only to the places named in the first column of table (A.) in the first schedule annexed hereto, and "local authority," "local rate," and "clerk of local authority" shall mean the "bodies of persons," "rate," and "officer" in that table in that behalf mentioned; and the said table, and the explanation annexed thereto, shall be of the same force as if they were enacted in the body of the Act of 1868 and this Act.

Officer of health. 31 & 32 Vict. c. 130. 38 & 39 Vict. c. 55. 41 & 42 Vict. c. 52.

3. The term "officer of health" as used in the Act of 1868, shall, as respects any urban sanitary district in England, mean the medical officer of health appointed by the urban sanitary authority of the district under the Public Health Act, 1875, and as respects any urban sanitary district in Ireland shall mean the medical officer of health appointed by the urban sanitary authority of the district under the Public Health (Ireland) Act, 1878, and shall not include any other officer.

8 & 9 Vict.

4. The Lands Clauses Consolidation Act 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, except the pro-

Section 4.

visions of those Acts with respect to the purchase and taking of lands otherwise than by agreement, and with respect to the entry on lands by the promoters of the undertaking, and save so far as any of the provisions of those Acts respectively are expressly varied by or are inconsistent with the provisions of this Act, are incorporated with the Act of 1868 as amended by this Act, and for the purposes of such incorporation the Act of 1868, as amended by this Act, shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking.

c. 18, and 23 & 24 Vict. c. 106, incorporated.

31 & 32 Vict. c. 130.

Owner may require local authority to purchase premises 31 & 32 Vict. c. 130.

5. Notwithstanding anything in the Act of 1868, the owner of any premises specified in an order of the local authority made under that Act, and requiring him to execute any works or to demolish such premises, may, within three months after service on him of the order, require the local authority in writing to purchase such premises.

In default of agreement amount of compensation to be settled by arbitration.

6. Where the owner of any premises has in manner aforesaid required the local authority to purchase the same, and no agreement is come to between such owner and the local authority as to the amount of the compensation to be paid by the local authority, the amount of the compensation to be paid by the local authority for the premises shall be settled by arbitration in manner provided by this Act.

Provisions as to arbitration.

7. In all cases in which the amount of any compensation is, in pursuance of this Act, to be settled by arbitration, the following provisions shall have effect; (namely,)

(1.) The amount of compensation shall be settled by an arbitrator to be appointed and removable by the local government board;

(2.) In settling the amount of any compensation—

(*a.*) The estimate of the value of the premises shall be based on the fair market value as estimated at the time of the valuation being made of such premises, and of the several interests in such premises, due regard being had to the nature and then condition of the property and the probable duration of the buildings in their existing state, and to the state of repair thereof, and all circumstances affecting such value, and without any additional allowance in respect of compulsory purchase; and

(*b.*) The arbitrator shall have regard to and make an allowance in respect of any increased value which, in his opinion, will be given to other premises of the same owner by the alteration or demolition by the local authority of the premises;

(3.) On payment or tender to the person entitled to receive the same of the amount of compensation agreed or awarded to be paid in respect of the premises, or on payment thereof in manner prescribed by the Lands Clauses Consolidation Act, 1845, the owner shall, when required by the local authority, convey his interest in such premises to them, or as they may direct; and in default thereof, or if the owner fails to adduce a good title to such premises to the satisfaction of the local authority, it shall be lawful for the local authority, if they think fit, to execute a deed poll in such manner, and with such consequences, as

8 & 9 Vict. c. 18.

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8 & 9 Vict. c. 18.

8 & 9 Vict. c. 18.

are mentioned in the Lands Clauses Consolidation Act, 1845;

(4.) Sections thirty-two, thirty-three, thirty-five, thirty-six, and thirty-seven of the Lands Clauses Consolidation Act, 1845; shall apply, with any necessary modifications, to an arbitration and to an arbitrator appointed under this Act:

(5.) The arbitrator may, by one award, settle the amount or amounts of compensation payable in respect of all or any of the premises included in one or more order or orders made by the local authority;

(6.) In the event of the death, resignation, or incapacity, refusal, or neglect to act of any arbitrator before he shall have made his award, the local government board may appoint another arbitrator, to whom all documents relating to the matter of the arbitration which were in the possession of the former arbitrator shall be delivered;

(7.) The arbitrator may, where he thinks fit, on the request of any party by whom any claim has been made before him, certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the local authority; and if within seven days after demand the amount so certified be not paid to the party entitled to receive the same, such amount shall be recoverable as a debt from the local authority with interest at the rate of five per centum per annum for any time during which the same remains unpaid after such seven days as aforesaid, but no such certificate shall be given where the arbitrator has awarded the same or a less sum than has been offered by the local authority in respect of such claim before the appointment of the arbitrator;

(8.) The award of an arbitrator shall be final and binding on all parties.

Application of 31 & 32 Vict. c. 130, s. 23, to site of purchased premises.

8. Section twenty-three of the Act of 1868 shall apply to the site of any premises purchased by a local authority which the owner has elected to retain under the provisions of this Act.

Recovery of expenses incurred by local authority in executing works.

9. Where the local authority, on default of the owner of any premises, themselves execute the required works, they may sell the old materials and retain the proceeds towards the expenses incurred by them in executing such works, and may recover the balance of such expenses from such owner as a debt due from him by action in any court of competent jurisdiction.

The expression "court of competent jurisdiction" shall, for the purposes of this section, be read and have effect as if the debt herein referred to were a simple contract debt, and not a debt or demand created by statute.

Disposal of land acquired by local authority under 30 & 31 Vict. c. 130.

10. Any land or premises acquired by any local authority under the Act of 1868 and this Act may from time to time be sold, let, and disposed of in like manner as any other lands acquired for sanitary purposes by such authority, and not needed for the purposes for which they were acquired; but in cases where the approbation of any government department is required for any such disposal, then only with that approbation.

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Local authority may dedicate land as highway, &c. 30 & 31 Vict. c. 130.

11. A local authority may, where they so think fit, dedicate any land acquired by them under the authority of the Act of 1868 and this Act as a highway or other public place.

Metropolitan board empowered to enforce Act in case local authority fail to do so.

12. In the event of any local authority within the metropolis declining or neglecting for the space of three months after receiving a notice from the metropolitan board of works (hereinafter called the board) requiring such local authority to put in force the provisions of this Act, in respect of any premises described in such notice, then and in such case all the powers vested in the local authority under this Act, so far as relates to any such premises, shall become vested in the said board, and the board shall have power so far as relates to any such premises to act in all respects for the purposes of this Act as though they were the local authority, and all expenses incurred by the board under this Act may be recovered by the board from and shall upon demand be paid by the local authority out of the local rates which they are authorized to make or apply for the purpose of defraying expenses incurred by them under this Act, and the amounts so payable to the board may and shall be included in the precepts from time to time issued by the board under the Metropolis Management Acts to the local authority.

Repealing 31 & 32 Vict. c. 130, s. 2, and sched. 1.

13. Section two of the Act of 1868 and the first schedule to that Act are hereby repealed.

Appropriation of property acquired by local authority.

14. In the metropolis the local authority or their lessees shall hold all property acquired by them under this Act upon trust to carry into effect some one or more of the purposes thereof:

The purposes of this Act shall in the metropolis be deemed to be—

First, the providing by the construction of new buildings, or the repairing or improvement of existing buildings, the labouring classes with suitable dwellings situate within the jurisdiction of the local authority:

Second, the opening out of closed or partially closed alleys or courts inhabited by the labouring classes, and the widening of the same, by pulling down any building, or otherwise leaving such open spaces as may be necessary to make such alleys or courts healthful:

But subject to the aforesaid trust, the local authority or lessees may from time to time sell, exchange, lease, or otherwise dispose of any premises acquired by them under this Act: Provided that if any property acquired by the local authority under this Act shall not within seven years after the acquisition thereof be disposed of by way of absolute sale or of exchange, or by lease for a period of not less than ninety-nine years, or be effectually dealt with by way of public improvement, then and in such case the property so acquired may be sold by the order of one of Her Majesty's principal secretaries of state, by public auction or public tender, with full power to fix a reserve price and subject to such terms and conditions as the said secretary of state shall deem proper, and the proceeds of such sale, after deducting the whole of the expenses attending the same shall be paid to the local authority to be by them applied to the purposes of this Act, and a receipt signed by the said secretary of state for the amount of the purchase money shall absolutely vest such property in the purchaser for the whole estate and interest of the local authority therein subject to the before-mentioned terms and conditions.

Section 15.

Lessee acquiring property under this Act to execute works to satisfaction of surveyor.

15. Every lessee who in the metropolis shall acquire any property under this Act shall forthwith, at his own costs, charges, and expenses, proceed to execute thereon, to the satisfaction of the surveyor of the local authority, the works shown on the plans referred to in the specifications prepared by the local authority, and such other works (being for some one or more of the purposes of this Act) as may have been agreed upon between the local authority and the lessee; and if the lessee shall at any time, in the opinion of the surveyor of the local authority, fail to exercise due diligence in the execution of the works, the local authority may, by themselves, their contractors, servants, workmen, and agents, enter upon the premises and execute the works so far as the same shall be incomplete, and reimburse themselves all costs, charges, and expenses incident to the execution of such works by sale of the old materials so far as the same may extend, or may recover from the parties making default the amount of such costs, charges, and expenses as a debt in Her Majesty's high court of justice, and shall also have an express charge upon the premises in respect of such amount, which charge may be realized by a sale of the premises, or any part thereof.

Lessee to give security for execution of works.

16. In the metropolis the local authority may also, by the resolution empowering any lessee to acquire property under this Act, require such lessee to give such security as the local authority shall think fit for the due execution by the lessee of the works to be done by them.

Premises, &c. to be forfeited on lessee not completing works within specified time.

17. If any lessee shall not, within three calendar months after he shall have obtained possession of any part of the premises in the metropolis, commence the execution of the works to be done by him, or if he shall not complete the same to the satisfaction of the local authority within one year after obtaining such possession, or within such extended time as the local authority shall by resolution determine, then the premises, together with all building materials, plant, tools, and other articles and effects thereon, shall be absolutely forfeited to and vest in the local authority, and they shall thenceforth hold the same for the purposes of this Act.

Annual account to be presented by the local authority.

18. Every local authority shall, in the metropolis, every year present to one of Her Majesty's principal secretaries of state, and in all other places shall present to the local government board, in such form as he directs, an account of what has been done, and of all moneys received and paid by them during the previous year with a view to carrying into effect the purposes of this Act.

Contracts for building, repairing, lighting, watering, &c. workmen's dwellings.

19. The local authority in the metropolis may from time to time, with the sanction and approval of one of Her Majesty's secretaries of state, enter into any contract with any persons or companies for building and for altering and enlarging, repairing, and otherwise improving such workmen's dwellings, forming part of any premises held by the said authority for the purposes of this Act, and for lighting and for supplying the same with water, and for fitting up the same respectively, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purposes of this Act; which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished, and done, and the penalties

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to be suffered in cases of non-performance; and true copies of all such contracts shall be entered in books to be kept for the purpose: Provided always, that no contract above the value or sum of one hundred pounds shall be entered into by the local authority for the purposes of this Act, unless previous to the making thereof fourteen days notice shall have been given in one or more of the public newspapers published in or circulating within the jurisdiction of the local authority, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the local authority at a certain time and place in such notice to be mentioned; but it shall not be incumbent on the local authority to contract with the person offering the lowest price.

Power of local authority to make byelaws for regulation of dwelling-houses.

20. The local authority may from time to time make, alter, and repeal byelaws for the regulation of the dwellings belonging to them under this Act, and there may be imposed by such byelaws a penalty, recoverable in a summary manner, not exceeding two pounds for any breach of the byelaws by the tenants or occupiers of the said houses. A copy of such byelaws shall be given to every tenant or occupier upon his taking possession of every such dwelling, or of any portion thereof. A byelaw under this Act and any alteration made therein, and any repeal of a byelaw, shall not be of any validity until it has been submitted to and confirmed by one of Her Majesty's principal secretaries of state in the case of the metropolis or by the local government board in the case of all other places.

Expenses of local authority.

21. All expenses incurred by the local authority in pursuance of this Act shall be defrayed by them out of the local rate; and it shall be lawful for the local authority, notwithstanding any limit contained in any Act of parliament respecting any local rate, to levy such local rate, or any increase of the same, not exceeding twopence in the pound in any year, for the purposes of this Act.

As to loans from public works loan commissioners. 16 & 17 Vict. c. 40.

22. The public works loan commissioners, as defined by the Public Works Loan Act, 1853, or in the metropolis the metropolitan board of works, may, if they think fit, lend to any local authority, and any local authority may borrow from the said commissioners, or in the metropolis from the metropolitan board of works, such sums as the said authority may require for the purposes of this Act, subject to the following regulations:

1. The amount of every loan shall be sanctioned by the commissioners of the treasury:
2. No loan shall be made except for the purpose of defraying the cost of building suitable dwellings for the labouring classes, or of defraying the cost of purchasing sites, and of building thereon such dwellings;
3. Every loan, with interest thereon at such rate as shall be agreed upon, but not a less rate of interest than four per centum per annum, shall be secured by a mortgage, in the form set forth in the third schedule hereto, of certain dwellings for the labouring classes erected or improved, or about to be erected or improved, by a local authority, in pursuance of this Act, and of the sites of such dwellings, and the appurtenances, if any, and also by a mortgage of the local rate:
4. Any sum borrowed on mortgage under this section may be

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paid off by sale of the premises comprised in such mortgage, or by instalments, or otherwise, as may be agreed upon between the parties, so that the period of the borrowing do not exceed seven years :

5. The amount borrowed by any local authority on the mortgage of any buildings and sites, and of the local rate, shall not exceed the estimated value of the proposed buildings, including the sites thereof, comprised in such mortgage, such value to be ascertained in manner approved by the said public works loan commissioners :

6. The powers conferred by Act of parliament on the said public works loan commissioners in relation to loans shall apply to any loans made under this section.

Jurisdiction of certain magistrates.

23. Any act, power, or jurisdiction hereby authorized to be done or exercised by two justices may be done or exercised by the following magistrates within their respective jurisdictions ; that is to say, as to England, by any metropolitan police magistrate or other stipendiary or police magistrate sitting alone at a police court or other appointed place, or by the lord mayor of the city of London, or any alderman of the said city, sitting alone or with others, at the Mansion House or Guildhall ; as to Scotland, by the sheriff or sheriff substitute, or by any two magistrates of a burgh ; and as to Ireland, by any one or more divisional magistrates of police in the police district of Dublin, and elsewhere by two or more justices of the peace in petty sessions.

Application of Act to Scotland.

24. In the application of this Act to Scotland the following provision shall have effect :

(1.) This Act shall be read and construed as if for the expression "the local government board," wherever it occurs therein, the expression "the secretary of state" were substituted, and the expression "the secretary of state" shall mean one of Her Majesty's principal secretaries of state :

8 & 9 Vict. c. 18. 8 & 9 Vict. c. 19.

(2.) The term "the Lands Clauses Consolidation Act, 1845," means the Lands Clauses Consolidation (Scotland) Act, 1845; and sections thirty-two, thirty-three, thirty-five, thirty-six, and thirty-seven of the former Act shall mean sections thirty-one, thirty-three, and thirty-four of the latter Act.

Application of Act to Ireland. 8 & 9 Vict. c. 18. 23 & 24 Vict. c. 106. 14 & 15 Vict. c. 70. 23 & 24 Vict. c. 97. 27 & 28 Vict. c. 71. 31 & 32 Vict. c. 70.

25. In the application of this Act to Ireland the following provisions shall take effect :

(1.) The term "the Lands Clauses Consolidation Act, 1845," means and includes the said Act as the same is amended by the Lands Clauses Consolidation Acts Amendment Act, 1860, the Railways Act (Ireland), 1851, the Railways Act (Ireland), 1860, the Railways Act (Ireland), 1864, and the Railway Traverse Act :

(2.) The term "the local government board" means the local government board for Ireland :

(3.) The term "public works loan commissioners" means the commissioners for public works in Ireland.

SCHEDULES.

FIRST SCHEDULE.

TABLE A.

ENGLAND AND WALES.

Places to which Act applies.	Description of Local Authority.	Description of Local Rate.	Description of Clerk of Local Authority.
The city of London and the liberties thereof. Local Acts { 11 & 12 Vict. c. 163. 14 & 15 Vict. c. 91.	Commissioners of sewers of the city of London. Local Act 11 & 12 Vict. c. 163.	The consolidated rate 11 & 12 Vict. c. 163, s. 158.	The clerk to the commissioners. 11 & 12 Vict. c. 163, s. 25.
The metropolis, exclusive of the city of London and the liberties thereof.	The vestry of each parish, or the board of works of each district elected under the Metropolis Local Management Act, 1855, and the Acts amending the same within their respective parishes and districts. The metropolitan board of works.	Rate to be levied in the metropolis in the same manner as the rate leviable by law by the vestry or district board of works respectively. 25 & 26 Vict. c. 120, s. 5.	Clerk of the vestry or district board.
Boroughs or urban sanitary district as aforesaid.	The urban sanitary authority.	The fund or rate out of which the general expenses of the execution of the Public Health Act, 1875, are defrayed by the urban sanitary authority.	The clerk of the urban sanitary authority.

Places to which Act applies.	Description of Local Authority.	Description of Local Rate.	Description of Clerk of Local Authority.
SCOTLAND.			
Burghs	The magistrates and town council.	The revenue of the burgh or any local rate leviable for prison purposes under 23 & 24 Vict. c. 105, or any other local rate leviable by the town council.	Town Clerk.
Places where police commissioners or trustees exercise the functions of police commissioners acting under "The General Police and Improvement (Scotland) Act," or trustees or commissioners acting under any general or local Act.	The police or other commissioners or trustees.	Property or rate belonging to or leviable by the commissioners or trustees.	Clerk of the commissioners or trustees or any other officer performing the duties of clerk.
IRELAND.			
The City of Dublin . .	The right honourable the lord mayor, aldermen, and burgesses in council.	The borough fund or borough or improvement rate.	The town clerk.
Towns corporate or boroughs (with the exception of the city of Dublin).	The mayor, aldermen, and burgesses acting in council.	The borough fund, or town fund, or borough rate.	The town clerk.
Towns having town commissioners under 9 Geo. 4, c. 82, or 17 & 18 Vict. c. 103, or any Acts amending the same, or having commissioners or other governing body under any local Act.	The town commissioners or other governing body.	Any rate leviable by these bodies, or any fund belonging to them applicable in the whole or in part to the making or repairing of sewers within their jurisdiction.	The clerk of the commissioners or other governing body.

Explanation.

For the purposes of this Act the following words shall have the meanings hereinafter assigned to them; (that is to say,)

(1.) "The metropolis" has the same meaning as it has in the Metropolis Management Act, 1855.

(2.) "Burgh" in Scotland shall mean any place returning or contributing to return members to parliament, or any place subject to the jurisdiction of a town council.

(3.) "Borough" in Ireland shall mean any place for the time being subject to the Act passed in the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, and intituled "An Act for the regulation of Municipal Corporations in Ireland."

SECOND SCHEDULE.

I. *Form of Order by Court of Quarter Sessions or Petty Sessions or Court of Burgh Magistrates in Scotland.*

Be it remembered, that on the day of 18 upon the report hereinafter mentioned, we, the undersigned justices, assembled at the court of quarter sessions holden in and for the county of , *or* assembled in petty sessions for the division or district of the borough or county of , *or* members of the court of burgh magistrates for [*as the case may be*], do hereby order and determine that one or more house or houses or buildings situate in or abutting upon or contiguous to or at the entrance of a certain court or alley within the borough *or* burgh, known or designated as court or alley [*or otherwise distinguishing the premises*], and specified in the report of the officer of health for the dated the day of 18 , is or are unfit for human habitation, and ought to be improved *or* demolished [*as the case may be*], in pursuance of "The Artizans and Labourers Dwellings Act, 1868."

II. *Form of Notice by Clerk of the Peace, Clerk of the Justices, or Clerk of the Court of Burgh Magistrates in Scotland to Clerk of Local Authority.*

Artizans and Labourers Dwellings Act, 1868.

I, *A.B.*, clerk of the peace *or* clerk of the justices [*or* clerk of the court of burgh magistrates] for the , do hereby certify, that on the day of 18 the justices assembled at the court of quarter sessions, *or* assembled at the petty sessions for the [*or* court of the burgh magistrates] [*as the case may be*], made an order, of which the following is a true copy:

[*Here give a copy of the Presentment, Form* I.]

As witness my hand, this day of in the year of our Lord 18 .

(Signed) (*A.B.*) clerk of the peace *or* clerk of the justices for .
[*or* clerk of the court of burgh magistrates].

To the clerk of the of

AN ACT

TO AMEND THE METROPOLIS MANAGEMENT ACT, 1855, AND THE ACTS AMENDING THE SAME, SO FAR AS RELATES TO THE PROTECTION OF THE METROPOLIS FROM FLOODS AND INUNDATIONS CAUSED BY THE OVERFLOW OF THE RIVER THAMES; AND FOR OTHER PURPOSES.

42 & 43 VICT. CAP. CXCVIII.

11TH AUGUST, 1879.

18 & 19 Vict. c. 120.

WHEREAS, notwithstanding the provisions of the Metropolis Management Act, 1855, and the Acts amending the same, with respect to the protection of lands from floods and inundations, the river Thames in times of high tides, floods, and excessive rains, by reason of the low level of various places, overflows its banks, causing inconvenience to persons and injury to health and property, and it is therefore expedient that the said provisions should be amended, and that provisions such as are in this Act contained should be made for providing for the due execution and maintenance of the works necessary to prevent the overflowing of the said river Thames within the limits by this Act prescribed, and for empowering the metropolitan board of works to enforce such provisions and to provide for the expenses incurred in relation thereto:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This Act may for all purposes be cited as the Metropolis Management (Thames River Prevention of Floods) Amendment Act, 1879.

Interpretation of terms.

2. In the construction of this Act the following words and expressions have the following meanings, unless excluded by the subject or context; (that is to say,)

19 & 20 Vict. c. 112.

The expression "the principal Act" means the Metropolis Management Act, 1855, as amended by the Metropolis Management

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Amendment Act, 1856, and the Metropolis Management Amendment Act, 1862 : 25 & 26 Vict. c. 102.

The expression "the secretary of state" means one of her Majesty's principal secretaries of state :

The expression "the board" means the metropolitan board of works :

The expression "person" includes any corporation, whether aggregate or sole :

The expression "river Thames" includes the rivers, streams, and watercourses within the flow and re-flow of the tides of the said river within the limits of this Act :

The expression "bank" and the expression "dam" includes any bank, wall, fence, wharf, dock, lock, gate, sluice, dam, or defence, or appliance, whether of a moveable, temporary, fixed, or permanent character, for the protection of lands within the limits of this Act from floods or inundations caused by the overflow of the river Thames :

The expression "flood works" means the entire or partial construction, alteration, reconstruction in the same or any altered position of any bank, and the repairing, raising, strengthening, improvement, or removal of any bank, and the enlargement, contraction, raising, lowering, arching over, improvement, or alteration of any sewer, channel, or water-course, and the discontinuance, closing up, or destruction of any such sewer, channel, or watercourse necessary for the protection of lands within the limits of this Act from floods or inundations caused by the overflow of the river Thames :

The expression "lands" includes messuages, buildings, erections, banks, lands, tenements, and hereditaments of any tenure, and rights and easements in, over, under, or in respect of the same :

The expression "street," in addition to the meaning assigned to the same term by the principal Act, includes the carriageway of any turnpike road and any county bridge and any place laid out as a street :

The expression "premises" includes lands and streets :

The expression "owner" means (except where otherwise expressly provided) the person for the time being receiving the rackrent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent, and includes any commissioners, trustees, or other persons or person in whom the premises in connexion with which the said word is used are vested, or who are charged with the control or management of the same.

Limits of Act.

3. The limits of this Act shall extend to the metropolis as defined by the principal Act.

Construction of Acts.

4. The principal Act, as amended by this Act, and this Act shall be read and construed together as one Act.

Execution of Works.

Flood works not to be

5. From and after the passing of this Act the execution of all flood works shall be subject to and in accordance with such plans as

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executed except in accordance with plans.

the board may from time to time cause to be prepared in pursuance of this Act, or with such plans or specification as the board may from time to time approve, and such works shall be carried on and completed to the satisfaction of the board, and save as aforesaid no such works shall be commenced, carried on, or completed.

Bodies and persons liable to provide for execution of flood works.

6. Subject to the provisions and limitations in this Act contained, the following bodies and persons shall be liable to provide for the execution of all flood works which may from time to time in the opinion of the board be necessary for the protection of premises within the limits of this Act from floods or inundations caused by the overflow of the river Thames; (that is to say,)

In respect of all such works to be executed upon any premises vested in or subject to the control and management of the commissioners of sewers of the city of London, the vestry of any parish mentioned in schedule A. to the principal Act, or the board of works of any district mentioned in schedule B. to the principal Act, such commissioners, vestry, or board of works:

In respect of all other such works the owners of the premises upon which the same are to be executed:

Where any such works are to be executed through, along, over, or under any part of the bed or soil of the river Thames immediately connected with any premises, such works shall be deemed to be works to be executed upon such premises.

Board to make plan of necessary flood works, and serve notice of the making thereof upon Commissioners of Sewers of the city of London, vestries, district boards, and owners affected thereby.

7. The board, as soon as may be after the passing of this Act, shall cause a plan to be prepared showing the line and level of the flood works which are in their opinion immediately necessary for effectually protecting all premises within the limits of this Act which in their judgment require protection from floods or inundations caused by the overflow of the river Thames; and when such plan has been prepared, the board shall cause notice of the preparation thereof to be served upon the commissioners of sewers of the city of London and upon the vestry of every parish and the board of works for every district in which any of the works shown on such plan are proposed to be executed, and upon every owner of premises liable to provide for the execution of any of the same, and shall together therewith cause two copies of such part of such plan as relates to any of such works in respect of the execution of which such commissioners, vestry, board of works, and owner are or is liable respectively to provide to be transmitted to them or him respectively, together with such sections, estimates, and other information relating to such copies as aforesaid as they may think proper; and the board shall by such notice require such commissioners, vestry, district board, or owner to inform the board within twenty-eight days after the receipt of the same whether they or he intend or intends to execute to the satisfaction of the board the works shown on the copies of such parts of such plan respectively, and for the execution of which such commissioners, vestry, district board, or owner are or is respectively liable to provide, or whether they or he object or objects to execute such works, and the reasons for such objection.

If the commissioners of sewers of the city of London, the vestry of any parish, board of works for any district, or any owner or owners give notice to the board of their or his objection to execute any flood works in manner aforesaid, and of the reasons for such objection, the board shall, during the twenty-eight days next after the receipt thereof, consider such objection and reasons, and shall as

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soon as may be after the expiration of such last-mentioned period of twenty-eight days make such order in relation thereto as the board may think just, and may by such order make any modification or alteration in such flood works, and shall transmit a copy of such order to the body or person making such objection.

In case the board by any such order make any modification or alteration in the flood works so objected to as aforesaid, they shall amend the plan prepared in manner aforesaid so as to show thereon such modification or alteration, and in such case they shall transmit to the body or person by whom such objection was made two copies of the part of such plan so amended, together with such order.

The board shall cause a copy of such plan showing all amendments made therein to be kept at their office, and the commissioners of sewers, the vestry of every parish, and the board of works of every district to which copies of any part of such plan or of any amendments therein have been transmitted as aforesaid shall cause one of such copies to be kept at their office, and all persons may at all reasonable times inspect any such copy without payment.

Limitation of powers as to works.

8. Nothing in this Act contained shall authorize the board, notwithstanding the general definition of the term bank and flood works, to direct the execution of any works other than such as are necessary for the protection of lands within the limits of this Act from floods and inundations caused by the overflow of the river Thames, and the board shall have no authority under this Act to prescribe or order any works for any other purpose, or any works for the embankment of the river Thames, or any part thereof, in the nature of the various embankments heretofore executed by the board under the authority of any special Act of parliament.

Powers of board as to flood works of a temporary character.

9. Where in the opinion of the board the erection of a dam of a fixed or permanent character on any premises would materially interfere with the transaction of the business carried on upon the river side of such premises, the board may, instead of ordering such works of a fixed or permanent character, by order authorise and require the erection of a temporary or moveable dam, subject to such regulations, restrictions, and conditions with respect to the fixing, removing, and maintenance of the same as the board may from time to time think necessary; and the board may by any such regulations, restrictions, and conditions authorise the temporary removal of any such dam during such times as they may think proper, and may prohibit the removal or alteration of the same, except during such times and in such manner as to them may seem necessary or proper.

Penalty for breach of regulations, &c., as to temporary works.

10. Where the board have ordered the erection of any dam of a temporary or moveable character subject to any regulations, restrictions, or conditions, any person making default in the due observance or committing a breach of any of the same shall be liable to a penalty not less than twenty pounds and not exceeding fifty pounds, and in case of a continuing offence to a further penalty not less than twenty pounds and not exceeding fifty pounds for each day after the first during which such default or breach continues; but, save as aforesaid, such person shall not be liable to any penalty or damages or to pay any compensation by reason or in respect of any such default or breach.

Power to commis-

11. The commissioners of sewers of the city of London, the vestry of any parish, or the board of works for any district within the limits

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sioners of sewers of city of London, vestry, or district board to execute flood works.

of this Act may, within twenty-eight days after the receipt of the copy or copies of such part of such plan transmitted to them as aforesaid, if they have not made any objection to execute the flood works shown on such copy, or if they have made any such objection, within twenty-eight days after the receipt by them of the order of the board made after consideration of such objection, give notice in writing to the board of their intention to execute to the satisfaction of the board the flood works shown on such copy, and for the execution of which such commissioners, vestry, or district board are liable to provide, and thereupon such commissioners, vestry, or district board may proceed to execute such works in accordance with such copy, under the authority and with the powers by this Act conferred.

Power to owner or owners liable to execute flood works.

12. Any owner or owners of premises who is or are liable to provide for the execution upon such premises of any flood works shown on any copy or copies of any part or parts of such plan transmitted to him or them as aforesaid, may within twenty-eight days after the receipt of the copy or copies of such part or parts of such plan as aforesaid, if he or they have not made any objection to execute the flood works shown on such copy or copies, or if he or they have made any such objection, within twenty-eight days after the receipt by him or them of the order of the board made after consideration of such objection, give notice to the board of his or their intention singly or jointly to execute to the satisfaction of the board such works as shown on such copy or copies, and thereupon such owner or owners may, subject to the provisions of this Act, singly or jointly enter upon any such premises and proceed to execute such works in accordance with such copy or copies, under the authority and with the powers by this Act conferred.

Power to board to execute flood works in case of default of commissioners of sewers of city of London, vestry, district board, or owner.

13. If the commissioners of sewers of the city of London, or any vestry, district board, or any owner of premises, neglect during twenty-eight days after the receipt of the copy of any part of such plan as aforesaid, if they or he have not made any objection, to execute the flood works shown on such copy, or if they or he have made any such objection, during twenty-eight days after the receipt by them or him of the order of the board made after consideration of such objection, neglect to give such notice as aforesaid to the board, or within twenty-eight days thereafter neglect to begin to execute any flood works shown on such copy, and for the execution of which such commissioners, vestry, district board, or owner are liable to provide, or fail to carry on or complete such works, when begun, with all reasonable despatch and to the satisfaction of the board, then and in every such case the board may, subject to the provisions of this Act, cause the same to be executed, carried on, or completed, and may for such purpose themselves and by their officers, servants, and workmen enter upon such premises and do all such acts, manners, and things as may be necessary for the execution of such works.

Powers for execution of flood works.

14. The board, the commissioners of sewers of the city of London, the vestry of any parish, the board of works for any district, or any owner of premises, in the execution of any flood works, in accordance with the provisions of this Act, may carry the same through, along, across, or under any street, or through, along, across, or under any cellar or vault which may be under the pavement of any street, and into, through, along, across, upon, or under any lands, and may for

such purpose enter upon any such cellar, vault, and lands, and any premises in the vicinity of or adjoining the same or connected therewith, compensation being made for any damage done thereby in manner provided by this Act.

Powers of board to take lands.

15. Where for the purpose of executing any flood works in accordance with the provisions of this Act it is in the opinion of the board necessary that the commissioners of sewers of the city of London, the vestry of any parish, the board of works for any district, or any owner of premises liable under this Act to provide for the execution of such works, should take and use any premises not vested in them or subject to their control or management, or of which they or he are or is not the owner, or that the board for the purpose of executing such works in place of them or him should take and use such last-mentioned premises, then and in every such case the board may take and use any such last-mentioned premises which may be required for the purpose of executing such works, and the board shall for such purpose have and may exercise all the powers of taking land conferred upon the board by the principal Act in relation to the taking of lands for works for the purpose of the sewerage or drainage of the metropolis.

For the purposes of notices required by the principal Act to be served upon owners or reputed owners of lands before applying for the consent of the secretary of state to the taking of lands compulsorily, the term "owner" shall, in relation to premises to be taken for the purposes of this Act, have the same meaning as in the Lands Clauses Consolidation Act, 1845. 8 & 9 Vict. c. 18.

When the board have taken any premises under the authority of this Act, they may by writing under their seal authorize the commissioners of sewers, the vestry of any parish, the board of works for any district, and any owner to take or use the same for the execution of any flood works in accordance with the provisions of this Act, and thereupon such commissioners, vestry, district board, or owner may for such purpose take and use such premises or any of them, and shall in respect of the same have all and the same powers as though they or he were or was the board.

Power to construct flood works on the shores and bed of the river Thames.

16. For the purpose of executing any works under the authority of this Act, the board, the commissioners of sewers of the city of London, the vestry of any parish, the board of works for any district, and any owner of premises liable to execute flood works, may, subject to the provisions of this Act, construct any such works through, along, over, or under the bed and soil and banks and shores of the River Thames: Provided always, that no such work shall be constructed in or upon the bed or shore of the River Thames as defined by the Thames Conservancy Act, 1857, except with the permission of the conservators of the said river, and under a license to be granted by the said conservators in accordance with the provisions of the said last-mentioned Act. 20 & 21 Vict. c. cxlvii.

Provision as to certain dock companies.

17. Notwithstanding anything in this Act, the following provisions shall apply and shall be the only provisions of this Act which shall apply to the execution of flood works in the case of or with reference to the following dock companies and their respective undertakings; that is to say, the London and Saint Katherine Docks Company, the Surrey Commercial Dock Company, the Millwall Dock Company, and the East and West India Docks Company:

Section 17.

(*a.*) If the board are of opinion that it is necessary for the protection of any lands within the limits of this Act from floods or inundations caused by the overflow of the river Thames that the height or level of any bank of any such dock company should be raised, they may by notice in writing under the hand of the chairman or engineer for the time being of the board, to be served upon the secretary or left at the chief office of the company, require that the height or level of such bank shall be raised by the company to such an extent as the board think necessary and shall specify in the notice; and if the company do not within one month after the service of the notice upon them as aforesaid give such notice to the board as is hereinafter mentioned, the company shall with all convenient speed raise the height or level of such bank to the extent specified in the notice.

(*b.*) Within the said period of one month the company may give notice in writing to the board that they consider the requirement of the board to be unnecessary in whole or in part for the purpose of such protection as aforesaid, and that they desire that the question whether such requirement is or is not necessary shall be determined by arbitration, and thereupon, upon the application either of the company or the board, the board of trade may appoint a competent and impartial engineer as arbitrator to determine the question.

(*c.*) The arbitrator by his award may direct that the height or level of any bank specified in the notice of the board shall be raised by the company to such an extent as he may consider necessary, and the company shall with all reasonable speed comply with any such direction of the arbitrator. If the arbitrator is of opinion that the requirements of the board are unnecessary in whole or in part, he shall so certify. The award of the arbitrator shall be final and conclusive, and the costs of the arbitration shall be in his discretion.

Power to inspect lands.

18. For the purpose of giving effect to the provisions of this Act, any engineer, surveyor, district surveyor, or other person duly authorized in writing by the board or by the commissioners of sewers of the city of London, or by the vestry of any parish, or by the board of works for any district, or by any owner of premises liable to execute flood works, or the owner of such premises, may enter upon any premises upon which any works executed or to be executed by them or him in pursuance of this Act are or will be situate, for the purpose of inspecting or taking surveys of the same, at any time between the hours of nine o'clock in the forenoon and four o'clock in the afternoon; and if any person during such hours refuses to allow such engineer, surveyor, district surveyor, or other officer or person, or any such owner, to enter upon any such premises, or obstructs him in the making of such inspection or survey, such person shall be liable to a penalty not exceeding ten pounds, and to a further penalty not exceeding five pounds for every day after the first day during which he so continues to act in contravention of this Act.

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Flood works upon the shore of the river Lee to be approved by the Lee conservancy board. 31 & 32 Vict. c. cliv.

19. In order to preserve the navigation of the river Lee, the plan of any flood works to be constructed under the authority of this Act through, along, over, or under the bed or soil or banks or shores of the river Lee within the limits of the jurisdiction of the Lee conservancy board under the Lee Conservancy Act, 1868, which may interfere with the free navigation of the said river, shall be approved by the Lee conservancy board in writing under their common seal before such works are commenced, certifying that the works according to such plan will not interfere with the free navigation of the said river, and thereupon such works shall only be executed in accordance with such plan, and no alteration shall thereafter be made in such plan, except with the approval of the Lee conservancy board in writing under their common seal as aforesaid.

Saving rights of the Lee conservancy board.

20. Nothing in this Act contained shall extend or be construed to extend to prejudice or derogate from the rights of the Lee conservancy board, or to prohibit, defeat, alter, or diminish any power, authority, or jurisdiction which at the time of the passing of this Act the Lee conservancy board did or might lawfully claim, use, or exercise, so far as such rights, power, authority, or jurisdiction may be exercised, or for the preserving of the free navigation of the river Lee.

Saving rights of the commissioners of sewers for Havering and other levels.

21. Except in so far as may be necessary for the due execution of this Act, nothing in this Act contained shall affect, alter, abridge, or interfere with any of the rights or powers at the time of the passing of this Act vested in the commissioners of sewers for the levels of Havering, Dagenham, Ripple, Barking, East Ham, West Ham, Leyton, and Walthamstow, and for the respective borders and confines thereof near to the same, as the same are respectively standing, lying, running, and being in the respective counties of Essex, Middlesex, and Kent, and except in so far as the said rights and powers are varied by or are inconsistent with the provisions of this Act they shall continue in full force.

Maintenance of banks.

Maintenance and repair of banks.

22. The bodies and persons by this Act liable to provide for the execution of flood works upon any premises shall respectively be liable to maintain and repair the banks upon the same, and shall for the purpose of such maintenance and repair, in accordance with any plan or specifications approved of by the board, have all and the same powers, and be subject to all and the same conditions as are by the preceding provisions of this Act conferred and imposed upon them respectively with respect to the execution of flood works in accordance with plans by the board.

Penalty for alteration of banks without consent of board.

23. From and after the passing of this Act, if any person make any alteration to any bank so as to affect the security of the premises upon which the same is situate, or of any other premises adjacent or near thereto, from flooding caused by the overflow of the river Thames, without the previous sanction in writing of the board, such person shall be liable to a penalty not exceeding ten pounds, and in the case of a continuing offence to a further penalty not exceeding ten pounds for every day after the first day after the making of such

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alteration until the same be sanctioned by the board as aforesaid, or if the same is not so sanctioned until such bank be restored to its former condition to the satisfaction of the board.

Survey and repair of dangerous or insufficient banks and maintenance and repair of same.

24. Whenever it is made known to the board that any bank in any parish or in any district within the limits of this Act is out of repair, dangerous, or insufficient for the effectual protection of any premises within the limits of this Act from floods or inundations caused by the overflow of the river Thames, they shall require a survey of such bank to be made by the district surveyor or by some other competent surveyor, and it shall also be the duty of the district surveyor to make known to the board any information he may receive with respect to any bank being in such state as aforesaid :

Upon completion of his survey such district or other surveyor shall certify to the board his opinion as to the state of any such bank as aforesaid :

If such certificate is to the effect that such bank is not out of repair, dangerous, or insufficient for the purposes aforesaid, no further proceedings shall be had in respect thereof ; but

If it is to the effect that such bank is out of repair, dangerous, or insufficient for the purposes aforesaid, the board shall cause notice thereof to be served upon the commissioners of sewers of the city of London, the vestry of any parish, or the board of works for any district, or owner of premises liable to execute flood works in relation thereto, specifying the flood works which are in their opinion necessary for repairing such bank, removing any cause of danger in relation thereto, or rendering the same sufficient for the purposes aforesaid (which works are in this Act referred to as "works of maintenance"), and transmitting therewith a plan showing the line and level of the same, and such sections, estimates, and other information relating to the same as they may think proper, and thereupon all the preceding provisions of this Act as to the giving notices to the board in relation to the execution of such works, and to objections as to the mode of such execution, and to the execution of such works, shall extend and apply to the giving of notices to the board in relation to the execution of such works of maintenance, and to objections as to the mode of such execution, and to the execution of such works of maintenance, in like manner in every respect as though such works of maintenance had been works shown on the plan referred to in such preceding provisions and prepared by the board immediately after the passing of this Act as aforesaid.

Compensation.

Mode of ascertaining amount of compensation for damages caused by execution of flood works, &c.

25. Any person or body who claims compensation for any damage caused by the execution of any flood works under the authority of this Act, or in respect of any lands or any interest in lands taken or used for the purposes of or injuriously affected by the execution of flood works under the authority of this Act, may claim such compensation from the board ; and if such person or body and the board do not agree with respect to such claim, then and in every such case the validity of such claim and the amount of compensation (if any) payable in respect thereof shall, on the application of either party, be determined by arbitration by the standing arbitrator hereinafter referred to, subject to and in accordance with the provisions of this Act, and such provisions shall be in substitution for the provisions with respect to the tribunal for determining the settlement of ques-

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tions of disputed compensation contained in the principal Act or any Act incorporated therewith, and the amount of compensation payable in respect of any such claim, when agreed upon or determined as aforesaid, shall be paid by the board as though the same were compensation payable in respect of lands taken under the authority of the principal Act; Provided always, that the owner or occupier of any lands shall not be entitled to any compensation on account of the execution by himself or by any other person or body of any flood works for which such owner is in pursuance of this Act liable to provide upon any lands of which he is the owner or occupier unless after the execution of such works such lands are permanently injuriously affected thereby, and then only to the extent of such permanent injury.

Powers of standing arbitrator as to amount of compensation.

26. When any claim is made for compensation under the authority of this Act the standing arbitrator shall have power to decide upon the validity of such claim, and to determine what (if any) compensation shall be made to the person or body making such claim, and in adjudicating upon such claim the standing arbitrator shall have regard to the nature of the flood works with respect to which the claim has arisen, the manner in which the same have been executed, the benefit (if any) which has accrued or which may reasonably be expected to accrue to the person or body making such claim by reason of the execution of such works, and generally to all the circumstances of the case; and the standing arbitrator may, in determining the compensation to be paid for any lands or interest in lands taken or injuriously affected under the authority of this Act, according as he shall think fit, include in or exclude from such compensation an allowance in respect of the compulsory powers of this Act, and he may make such order as to the payment of the costs of such arbitration wholly or in part by the board or the claimant, as he shall think just.

Appointment of standing arbitrator.

27. For the purpose of determining the validity of claims for compensation and the amount of compensation payable in respect of any claim declared to be valid by this Act directed to be settled by arbitration, there shall be an arbitrator, in this Act called the "standing arbitrator," appointed and acting as follows; (that is to say,)

(1.) The secretary of state shall, before the 31st day of December in the year 1879, and before the same day of December in every third succeeding year, by writing under his hand appoint a standing arbitrator and fix the remuneration to be paid to him, and every person so appointed shall continue in office for three years from such 31st day of December in such years respectively:

(2.) Any standing arbitrator may be removed from his office by the secretary of state by writing under his hand:

(3.) If any standing arbitrator during his term of office dies or resigns or is removed from office, the secretary of state shall in manner aforesaid, within one month after notice of his death or resignation or removal, appoint another person to be a standing arbitrator in his place, and the person so appointed shall continue in office as long only as the person in whose place he is appointed would have been entitled to continue in office:

(4.) The remuneration of the standing arbitrator shall be paid by the board.

Before any standing arbitrator enters upon the duties of his office

Section 27. he shall, in the presence of a justice, make and subscribe the following declaration ; (that is to say,)

"I, *A. B.*, do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine all matters which may from time to time be referred to me under the provisions of the Metropolis Management (Thames River Prevention of Floods) Amendment Act, 1879.

A. B."

And if the standing arbitrator having made such declaration wilfully acts contrary thereto, he shall be guilty of a misdemeanor.

If any reference is pending before a standing arbitrator at the time when he resigns or goes out of office by effluxion of time, it shall nevertheless be proceeded with by him, and his decision shall have the like effect as if he had not resigned or gone out of office.

Proceedings before standing arbitrator.

28. The standing arbitrator shall appoint a place and time for the hearing of any matter coming before him, and shall cause six days previous notice thereof to be given in such manner as he shall think proper, and at such place and time shall consider such matter and hear the parties appearing by themselves, their counsel, solicitors, or agents, and take evidence, and the standing arbitrator may administer an oath or an affirmation (where an affirmation in lieu of an oath would be admitted in a court of justice) to any person before hearing any evidence from him, and may admit the affidavit or declaration of any person.

The standing arbitrator, on the application of any party, may by summons require the attendance before him of any person to be examined as a witness before him, and may, on the like application, by summons require any person to bring before him all books, papers, and writings in his possession, custody or control relating to any matter to be inquired into by the standing arbitrator.

Every person so summoned shall attend the standing arbitrator and answer all questions touching the matter to be inquired into, and bring and produce all papers, books, and writings required according to the tenor of the summons ; and every such person not attending in obedience to such summons, or refusing to answer such questions, or failing to bring or produce such papers, books, and writings as aforesaid, shall be liable, if the standing arbitrator shall so order, to a penalty not exceeding fifty pounds : Provided that any person so summoned shall not be bound to obey the summons unless a reasonable sum is first paid or tendered to him for his expenses.

If any person on examination on oath or affirmation before the standing arbitrator, or in any affidavit or declaration used before the standing arbitrator, wilfully gives false evidence, he shall be deemed guilty of perjury.

In case any party fail to appear at the time and place appointed for the hearing of any matter by the standing arbitrator, the standing arbitrator may proceed with the hearing of such matter in the absence of such party.

The decision of the standing arbitrator in any arbitration under this Act shall be final and binding upon the parties to such arbitration.

No award made by the standing arbitrator in accordance with this Act shall be set aside for any irregularity or informality.

Financial.

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Payment of expenses of commissioners of sewers of city of London.

29. The expenses from time to time incurred by the commissioners of sewers of the city of London in the execution of any flood works under this Act, and any expenses which the board may from time to time require payment of from the said commissioners as hereinafter provided, shall be paid by the said commissioners out of any rates which the said commissioners are authorized to direct to be made under any Act relating to the sewerage of the said city, or out of moneys borrowed on the security of such rates; and the said commissioners shall have full power from time to time to raise the amount of any such expenses, and the interest on any moneys borrowed as aforesaid, and any moneys required for the repayment thereof, by any such rate which they may be authorized to direct to be made as aforesaid or by any addition thereto.

Payment of expenses of vestries and district boards.

30. Any vestry or district board, for the purposes of paying any expenses from time to time incurred by them in the execution of any flood works under this Act, or any expenses which the board may from time to time require payment of as hereinafter provided, shall from time to time raise the sums they may require by borrowing or by means of rates in every respect as if such expenses were expenses of such vestry or district board incurred in the execution by them of the principal Act in relation to the sewerage of their parish or district; and any such vestry or district board in any case in which it appears to them that such expenses have been incurred for the special benefit of any particular part of their parish or district, or have not been incurred for the equal benefit of the whole of their parish or district, may by order direct the sum or sums necessary for defraying such expenses, or any part thereof, to be levied in such part or exempt any part of such parish or district from the rates, or require a less rate to be levied thereon, as the circumstances of the case may require; and any such district board may refrain, where any entire parish or parishes ought in their judgment to be so exempt, from levying any money thereon, notwithstanding they may issue any order or orders for levying sums upon any other parish or parishes in their district.

All the provisions of the principal Act concerning orders by vestries and district boards requiring overseers of parishes to levy and pay sums required by vestries and district boards for defraying their expenses in relation to the sewerage of their parish or district as aforesaid, and for and in relation to the making of rates for such purposes, and for levying and enforcing payment of the same, shall extend and apply to and in the case of all sums required by vestries and district boards for defraying the expenses incurred by them in the execution of this Act, and for paying interest on moneys borrowed for the payment of such expenses and for repaying such moneys under the authority of this Act.

Power to board to recover expenses incurred by them in whole or in part.

31. Where the board execute any flood works for the execution of which the commissioners of sewers of the city of London, the vestry of any parish, the board of works of any district, or any owner of premises were or was liable to provide, they may by order require payment of and recover the whole or such part as they may think just of the expenses incurred by them in respect of the execution of

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the same (exclusive of any moneys paid or any expenses incurred by them in respect of or in relation to compensation) from the said commissioners, from such vestry, board of works, or owner:

Provided also, that if the said commissioners or any vestry, district board, or owner feel aggrieved by the amount of any sum required by order of the board to be paid by them or him in respect of any such expenses so incurred by the board as aforesaid, they or he may at any time within twenty-one days after service of any such order decline to pay such amount, and thereupon the amount of such sum shall be determined by arbitration by the standing arbitrator, who, upon the application of either party, shall, having regard to all the circumstances of the case, determine the amount of the sum to be paid to the board in respect of such expenses, and shall make such order as to the payment of the costs of such arbitration as he shall think just, and the amount so fixed shall be paid to and may be recovered by the board.

Where any sum is payable to the board by any owner of premises in pursuance of this section, the board shall, if required by such owner, accept payment of such sum by half-yearly instalments of such amount as will be sufficient to discharge the same, together with interest on so much thereof as shall for the time being remain unpaid, at the rate of five pounds per centum per annum, in thirty years from the date when such sum became payable by such owner, and thereupon the board shall be entitled from time to time to require payment of such half-yearly instalments from the owner of such premises for the time being; and until all such instalments shall be fully paid off they shall be a charge upon such premises in priority of all other charges and incumbrances whatsoever, except the land tax and the property tax charged upon the owner, and shall from time to time be paid by the owner of such premises for the time being to and may be recovered by the board.

Rentcharge may be granted in respect of works.

32. Where any owner of lands has incurred any expenses in pursuance of this Act, the Board on being satisfied that such expenses have been duly incurred, may by order under their seal grant to such owner a yearly rentcharge issuable out of the lands in respect whereof such expenses have been incurred and specified in such order, and thereupon such lands shall be subject to and charged with the payment of such rentcharge in priority of all other charges or incumbrances whatsoever (except the land tax and the property tax charged upon the owner), and such rentcharge shall be payable by the person who for the time being is the owner of such premises.

Such rentcharge shall be personal estate, and shall begin to accrue from the day of completion of the works in respect of which such expenses shall in any such order be expressed to have been incurred, and shall be payable by equal half-yearly payments on the days mentioned in such order during a term not exceeding thirty years, in such manner that the whole of such expenses, with the cost of preparing the said order, together with interest thereon respectively at the rate of five pounds per centum per annum on the sum from time to time remaining unpaid, shall be repaid at the end of the said term.

At any time before the expiration of the term during which any such instalments or any such rentcharge are or is payable, the person liable to pay the same may redeem such instalment or rentcharge by paying to the board or to the person entitled to receive the expenses in respect of which such instalments are payable or such rentcharge was granted, or such part thereof respectively as may not have been

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defrayed by the half-yearly payments of such instalments or rent-charge respectively already made.

Whenever any annual payment by way of instalment or rent-charge is under this Act payable by the owner for the time being of any lands, and such owner for thirty days after notice requiring him to pay the same makes default in paying the same, then and in every such case the board or the person entitled thereto shall be at liberty to require the occupier of such premises to pay the same to them or him, and in case any such occupier shall for fourteen days after notice in writing by the board or person so entitled as aforesaid requiring him to make such payment make default therein, then and in every such case the board or such person entitled as aforesaid may recover the amount due in respect of such rentcharge or instalments from such occupier in the same manner and with the like remedies in every respect as if they or he were overseers of the poor of the parish in which such premises are situate, and as if the amount due were poor rates in arrear in respect of such premises: Provided always, that where any payment is made by or recovered from any occupier under this section, he shall be entitled to deduct the amount of the same from any payment he may from time to time be liable to make to the owner until he be reimbursed such amount.

Power to apply moneys raised under other Acts to expenses incurred by board under this Act.

33. The board, for the purpose of paying any expenses from time to time incurred by them under this Act, may apply any moneys raised or authorised to be raised by them under any Act of parliament and not required for the purposes of that Act, and also any moneys which they may be authorized to raise for the purposes of this Act.

Expenses of board.

34. All expenses incurred by the board in the execution by them of this Act, and not hereby otherwise provided for, shall be deemed to be expenses incurred by them in the execution of the principal Act, and shall be raised and paid accordingly.

As to liability in respect of certain flood works for which persons are liable by Act of parliament, by prescription, tenure, or otherwise by law.

35. Nothing in this Act contained shall exempt from liability to maintain and repair any bank any person or body who is by Act of parliament, by prescription, or by reason of tenure, or otherwise by law liable to maintain or do any repairs to any bank: Provided always, that whenever any flood works have been executed by any body or person in pursuance of this Act affecting such bank, and in relief of the liability of the person or body liable to maintain or do any repair to such bank as aforesaid in respect of such maintenance and repair thereof, then and in every such case the person or body so liable as aforesaid shall pay to the body or person executing such works such sum as is hereafter in this section mentioned.

The sum to be paid by such person or body in respect of such works shall be such sum as may be agreed on between such person or body and the body or person executing such works as aforesaid, or in default of agreement as may be settled by arbitration by the standing arbitrator, who, upon the application of either party, shall settle the same, and shall in settling the same have regard to the expenses which the person or body by whom such sum is to be paid would have reasonably been liable to incur in respect of the maintenance or repair of such bank as aforesaid if such works had not been executed as aforesaid, and who shall make such order as to the payment of the costs of such arbitration as he shall think just.

Section 35. Any moneys received by the board, the commissioners of sewers of the city of London, the vestry of any parish, or the board of works of any district under the provisions of this section, shall be applied by them towards the payment of the expenses which they have incurred or may incur in the execution of works in pursuance of the provisions of this Act.

Where the expenses of any such works are made a charge by the board upon any premises, any moneys received by the board in respect of the same under the provisions of this section shall be applied by the board in reduction of the amount of such charge.

Miscellaneous.

Recovery of expenses.

36. Any expenses recoverable by the board under the authority of this Act may be recovered in manner prescribed by the principal Act with respect to the recovery of expenses directed by that Act to be recovered in a summary manner.

As to notices and orders.

37. A notice or order under this Act may be wholly or partly in writing or in print, and may be served on the owner or occupier of any premises by leaving the same with the occupier of such premises or with some inmate of his abode, or if there is no occupier by putting up such notice, plan, or order on a conspicuous part of the building or premises to which the same relates, and it shall not be necessary to name the owner or occupier of such premises; nevertheless, when the owner of any such premises and his residence or that of his agent is known to or can with reasonable diligence be discovered by the party by whom or on whose behalf any notice or order is intended to be served, it shall be the duty of such party to send a copy of every such notice or order by the post in a registered letter addressed to the residence or last known residence of such owner or of his agent.

The term "notice" in this section shall include plan.

Agreement between landlord and tenant not to be avoided.

38. Nothing in this Act contained shall be taken to avoid any contract made between any landlord and tenant of any lands to which the provisions of this Act relate with respect to the execution of any flood works or of any other works for the protection of such lands or any lands adjoining or near the same from floods or inundations caused by the overflow of the river Thames, or with respect to the maintenance and repair of such lands, or of any house, building, or other erection thereupon, or with respect to any payments, rates, dues, and sums of money payable in respect of such lands, house, building, or other erection; and any moneys paid by any landlord or any tenant in pursuance of this Act, in relation to any matters with respect to which under any such contract such tenant or landlord is liable, may be recovered by such landlord as rent due by such tenant, or be deducted by such tenant from any rent from time to time due by him to such landlord.

Saving rights of the conservators of the river Thames.

39. Nothing in this Act contained shall extend or be construed to extend to prejudice or derogate from the estates or rights of the conservators of the river Thames, or to prohibit, defeat, alter, or diminish any power, authority, or jurisdiction which at the time of the passing of this Act the said conservators did or might lawfully claim, use, or exercise.

Saving rights of

40. Nothing contained in this Act shall extend to authorise the board to take, use, enter upon, or interfere with any land, soil, or

Section 40.

the duchy of Cornwall.

26 & 27 Vict. c. 49.

water, or any rights in respect thereof, belonging to Her Majesty, her heirs or successors, in right of the duchy of Cornwall without the consent in writing of some two or more of such of the regular officers of the said duchy or of such other persons as may be duly authorised under the provisions of the Duchy of Cornwall Management Act, 1863, section 39, to exercise all or any of the rights, powers, privileges, and authorities by the said Act made exercisable or otherwise for the time being exercisable in relation to the said duchy, or belonging to the Duke of Cornwall for the time being, without the consent of such duke, testified in writing under the seal of the duchy of Cornwall, first had and obtained for that purpose, or to take away, diminish, alter, prejudice, or affect any property, rights, profits, privileges, powers, or authorities vested in or enjoyed by Her Majesty, her heirs or successors, in right of the duchy of Cornwall, or in or by the Duke of Cornwall for the time being.

Saving rights of the Crown.

41. Nothing contained in this Act shall authorise the board, the commissioners of sewers of the city of London, the vestry of any parish, the board of works for any district, or any owner of premises liable to execute flood works, to take, use, or in any manner interfere with any land or hereditaments, or any rights of whatsoever description, belonging to the Queen's most excellent Majesty in right of her crown and under the management of the commissioners of Her Majesty's woods, forests, and land revenues, or either of them, without the consent in writing of the same commissioners, or one of them, on behalf of Her Majesty, first had and obtained for that purpose (which consent such commissioners are hereby respectively authorised to give); neither shall anything in the said Act contained extend to take away, prejudice, diminish, or alter any of the estates, rights, privileges, powers, or authorities vested in or enjoyed or exercisable by the Queen's Majesty, her heirs or successors.

Saving rights of the Crown in respect of property vested in the Crown or in the commissioners of Her Majesty's works.

42. Nothing in this Act shall authorise the board to exercise any power or control whatsoever in or over any lands or hereditaments which now are or hereafter shall be vested in the crown or in the commissioners of Her Majesty's works and public buildings for public purposes or for the public service, or under the management of the said commissioners for the like purposes or service.

So much of sections 69 and 70 of 18 & 19 Vict. c. 120, as relate to flood works, &c., to cease to be in force.

43. From and after the passing of this Act the provisions of sections sixty-nine and seventy of the principal Act, so far as they relate to the execution and maintenance of flood works and banks as defined by this Act by vestries and district boards, shall cease to be in force or to have effect.

Recovery and application of penalties.

44. Every penalty, fine, or forfeiture imposed by this Act, or for default or breach of any regulation, restriction, or condition made or imposed in pursuance thereof, may be sued for and recovered by the board, or any officer or servant by them authorized, as if it were a penalty or forfeiture imposed by the principal Act, and shall be paid to the board and applied by them towards the expenses of carrying this Act into execution, anything contained in an Act made and passed in the session holden in the second and third years of the reign of Her present Majesty, chapter seventy-one, or in any other Act or Acts, to the contrary notwithstanding,

Expenses of Act

45. The costs, charges, and expenses preliminary to and of and incidental to the preparing of, applying for, obtaining, and passing of this Act shall be paid by the board.

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